S. HRG. 100-847

UNIFORM REGULATORY JURISDICTION ACT OF 1987

HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY REGULATION AND CONSERVATION

OF THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

S. 1717

TO ASSURE UNIFORMITY IN THE EXERCISE OF REGULATORY JURISDICTION PERTAINING TO THE TRANSPORTATION OF NATURAL GAS AND TO CLARIFY THAT THE LOCAL TRANSPORTATION OF NATURAL GAS BY A DISTRIBUTION COMPANY IS A MATTER WITHIN STATE JURISDICTION AND SUBJECT TO REGULATION BY STATE COMMISSIONS, AND FOR OTHER PURPOSES

JUNE 14, 1988

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S311-18

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UNIFORM REGULATORY JURISDICTION ACT OF 1987

TUESDAY, JUNE 14, 1988

U.S. SENATE,
SUBCOMMITTEE ON ENERGY REGULATION
AND CONSERVATION,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:33 a.m., in room SD-366, Dirksen Senate Office Building, Hon. Dale Bumpers, presiding.

OPENING STATEMENT OF HON. DALE BUMPERS, U.S. SENATOR FROM ARKANSAS

Senator BUMPERS. The purpose of this hearing this morning is to receive testimony on S. 1717, a bill that would allow state commissions to set the transportation rates of local distribution companies whose retail service areas straddle state lines.

Sales and transportation of natural gas in interstate commerce are subject to Federal jurisdiction under the Natural Gas Act. There are a handful of companies who cross state lines who perform a local distribution function. Local distribution companies are normally regulated by state utility commissions. Because these companies serve customers across state lines, they are regulated by the Federal Energy Regulatory Commission.

The bill before us today, S. 1717, was introduced to change this situation. It would affect customers in my own state of Arkansas. As such, I am eager to learn more about any related problems facing these companies and the views of state and Federal regulators.

Without objection, I'll put a copy of the bill in the hearing record at this point.

[The text of S. 1717 follows:]

II

100TH CONGRESS
1ST SESSION

S. 1717

To assure uniformity in the exercise of regulatory jurisdiction pertaining to the transportation of natural gas and to clarify that the local transportation of natural gas by a distribution company is a matter within State jurisdiction and subject to regulation by State commissions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 24 (legislative day, SEPTEMBER 22), 1987

Mr. GRASSLEY (for himself, Mr. HARKIN, and Mr. ROCKEFELLER) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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A BILL

To assure uniformity in the exercise of regulatory jurisdiction pertaining to the transportation of natural gas and to clarify that the local transportation of natural gas by a distribution company is a matter within State jurisdiction and subject to regulation by State commissions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Uniform Regulatory Jurisdiction Act of 1987".

SEC. 2. JURISDICTION OVER TRANSPORTATION OF GAS.

To the extent any person—

(1) transports natural gas in a service area which the Federal Energy Regulatory Commission has determined for such person under section 7(f) of the Natural Gas Act; or

(2) transports gas solely on a retail basis utilizing a gas pipeline of which the Federal Energy Regulatory Commission certificated portion was less than 30 miles long as of December 31, 1960,

the rates and charges for such transportation, even if such transportation crosses State lines, shall, upon election of such person, be subject to regulation by the State commission in the State in which the gas is consumed.

O

Senator BUMPERS. I will introduce our first witness, Dr. Robert Johnston, who is Chairman of the Arkansas Public Service Commission. Robert, welcome. We're glad to have you. Please proceed with your testimony.

STATEMENT OF DR. ROBERT E. JOHNSTON, CHAIRMAN, ARKANSAS PUBLIC SERVICE COMMISSION

Dr. JOHNSTON. Thank you, Mr. Chairman.

Mr. Chairman, I'm Chairman of the Arkansas Public Service Commission, and on the Committee on Gas and on the Executive Committee of the National Association of Regulatory Commissioners, NARUC, on whose behalf I appear today. Thank you for inviting NARUC to testify.

NARUC was founded just about 100 years ago. It includes the state and national commissions who regulate utilities, and we support enactment of S. 1717 with two slight modifications. The passage of this bill would clarify that transportation of natural gas by multi-state local distribution companies, or LDCs, is a matter of state rather than Federal jurisdiction.

From a national view, the impact of S. 1717 will be very limited. There are about 1,400 LDCs in the country, and this bill would affect only 8 of those, as you indicated, Senator Bumpers, 2 of them in Arkansas. But for these companies and their states, this legislation is of considerable importance.

June 21, coming up next week, is important for three reasons. It is, of course, the summer solstice. It's the 200th anniversary of the ratification of the Constitution, but it's the 50th anniversary of the passage of the Natural Gas Act in 1938. The gas industry remained relatively stable for about 40 years. Most wellhead sales went through the interstate pipelines which resold the gas to LDCs under long-term arrangements. The boundaries between Federal and state jurisdiction remain well-defined. The FPC and now the FERC regulated interstate wholesale sales of the producers in the interstate pipelines, and the state commissions regulated the retail sales of the LDCs.

Beginning with the NGPA in 1978 and accelerating with deregulation of wellhead sales in 1985, the gas industry has undergone a radical transformation evolving in a manner that Congress could not have foreseen in 1938. But despite these upheavals, NGA has proven extremely adaptable. FERC has taken a number of regulatory initiatives in response to, but just as often being the cause of dramatic changes. This has occurred without the need for additional legislation, at least until now.

This legislation concerns a handful of gas utilities, little known, little understood, commonly called section 7(f) companies. Section 7(f) companies and the two examples in Arkansas are essentially LDCs which, through the growth of their service areas, operate retail distribution facilities across state lines and which have received from FERC a service area determination pursuant to section (f). Without that 7(f) service area, the LDCs would have to obtain individual authorizations from FERC to add delivery taps or construct transmission lines to serve their retail customers. The 7(f)

service area permits the companies to construct facilities within the service area without individual authorizations from FERC.

The congressional drafters of 7(f), with remarkable foresight, anticipated the need for those service areas and for a mechanism permitting FERC to remove itself where Federal regulations were not necessary or appropriate. As the 7(f) company operated in its historical role as a merchant selling gas to retail customers, the 7(f) determination permitted the company to operate its facilities and serve its distribution customers subject to the state commissions.

But the drafters of the NGA couldn't have foreseen the recent rise of LDCs providing transportation services to their retail customers. For most LDCs, the terms of transportation to retail customers remain in the exclusive jurisdiction of state commissions. But for 8 of the 1,400 LDCs, regulatory jurisdiction of retail transportation is now with both the FERC and the state commissions because their retail distribution facilities cross state lines.

In 1987, involving Washington Gas Light Company, who is here today, FERC determined that the NGA required it to regulate WGL's transportation through its "high pressure" transmission lines and "low pressure" lines which cross state boundaries. But recognizing the local distribution exemption under section 1(b) of NGA, FERC left to the state commissions jurisdiction over the company's transportation through the other low pressure lines. Thus, both Federal and state commissions will be applying different terms and conditions to segments of the same transportation service.

This bifurcation of jurisdiction over WGL's retail transportation, perhaps mandated by the NGA, is illogical and contrary to public policy. Depending upon the company's system and the view of what is high and low pressure, transportation within a company may be subject to state regulation, Federal regulation, or both. Thus, three customers served by different segments of the same 7(f) LDC could pay three different rates for what in their eyes are identical services.

NARUC believes that all of an LDC's services to its retail customers, whether sales or transportation, should be left exclusively to state commissions. The 7(f) company's transportation to a retail customer uses the same facilities, involves the same parties and raises the same cost allocation and public interest issues as a sale to that customer. A 7(f) company's transportation to its retail customers is and should be treated as part of the company's local distribution function.

Appropriate terms, conditions and rates for retail transportation services requires a detailed knowledge of the operational and financial aspects of the LDC and a sensitivity to the unique economic needs of the communities it serves. State commissions with experience regulating the company's retail sales have a broader understanding and are better equipped to regulate retail transportation than FERC.

NARUC supports this legislation subject to these two modifications. We urge that the provision in S. 1717 which gives state commissions exclusive jurisdiction only if the company so elects that this be deleted, stricken. Exclusive state jurisdiction over the retail transportation should be mandatory not optional.

We further suggest that S. 1717 be amended so that it affects only transportation to the retail end users of the 7(f) company. A number of 7(f) companies have blanket certificates from FERC authorizing transportation of gas to interstate pipelines for consumption by end users in other states. This transportation to off-system end users should continue to be regulated by FERC. Limiting state commission jurisdiction to transportation customers served directly by the 7(f) companies preserves FERC's jurisdiction over these off-system services under FERC blanket certificates.

With these two modifications, S. 1717 will restore the delicate balance between state and Federal regulation historically mandated under NGA and return to the affected states the ability to regulate the retail sales and services of LDCs for public interest. NARUC urges Congress to enact this important legislation expeditiously.

Similarly, NARUC urges again Congress' attention to legislation on natural gas bypass which presents similar yet larger conflicts with regard to Federal/state jurisdiction.

Thank you, Mr. Chairman, for providing the opportunity for NARUC to present its views.

[The prepared statement of Dr. Johnston follows:]

BEFORE THE
UNITED STATES SENATE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
SUBCOMMITTEE ON ENERGY REGULATION AND CONSERVATION

TESTIMONY OF

THE HONORABLE ROBERT E. JOHNSTON
ARKANSAS PUBLIC SERVICE COMMISSION

ON BEHALF OF THE

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ON

S. 1717

A Bill Concerning Regulatory Jurisdiction Over
the Transportation of Natural Gas by
Section 7(f) Local Distribution Companies

June 14, 1988

TESTIMONY OF ROBERT JOHNSTON
ON BEHALF OF THE
NATIONAL ASSOCIATION OF REGULATORY AND UTILITY COMMISSIONERS

Mr. Chairman and Members of the Subcommittee:

I am Robert Johnston. I am Chairman of the Arkansas Public Service Commission and I serve on the Committee on Gas and on the Executive Committee of the National Association of Regulatory Utility Commissioners (NARUC), on whose behalf I appear today. Thank you for inviting NARUC to testify.

The NARUC is a quasi-governmental, non-profit Association, founded in 1889, and comprised of the state and national commissions responsible for regulating our nation's utilities and carriers. We testify before you today to urge the enactment of S. 1717, with two slight modifications, which would clarify that the transportation of natural gas by a multi-state local distribution company (LDC) is a matter of state, rather than federal, jurisdiction. Our position is based on a Resolution Enforcing Legislation to Affirm State Jurisdiction Over Transportation by Multi-Jurisdictional Gas Distribution Companies, unanimously adopted on July 23, 1987 by the NARUC Executive Committee. A copy of the Resolution is attached.

Our position is also consistent with this Administration's policy on states' rights as articulated in last year's Executive Order 12612 entitled "Federalism", wherein the President suggests we recognize the distinction between problems of national scope (which may justify national action) and problems that are merely common to the

states (which will not justify national action because individual states, acting individually or together, can effectively deal with them).

Clearly, transportation service by multi-state LDCs is not a "problem of national scope" and can be resolved by the action of states "acting individually or together".

From a national perspective, the impact of S. 1717 will be extremely limited. Of the approximately 1400 local distribution companies (LDCs) in the country, S. 1717 will affect only eight such companies, two of which are located in Arkansas. From the perspective of these companies and the state commissions which regulate their retail rates and services, however, this legislation is of considerable importance.

In the first forty years of the history of the Natural Gas Act (NGA), the structure of the natural gas industry remained relatively stable and predictable. The vast majority of wellhead sales were made to interstate pipelines which in turn resold the gas to LDCs under long-term arrangements. In this environment, the boundary lines between federal and state jurisdiction remained well defined. What was then the Federal Power Commission (and now the Federal Energy Regulatory Commission (FERC)) regulated the interstate wholesale sales (sales for resale) of the producers and interstate pipelines, and state commissions regulated the retail sales of the LDCs.

Commencing with the Natural Gas Policy Act of 1978 (NGPA),

and accelerating with the deregulation of most wellhead sales in 1985, the natural gas industry has undergone a radical transformation and is evolving in a manner which no one could have foreseen in 1938 when the NGA was enacted. Despite these upheavals, the NGA has proven extremely adaptable. The FERC has undertaken a number of regulatory initiatives in response to, and has often been the cause of, these dramatic changes. All of this has occurred without the need for additional legislation ... until now.

There exists a handful of gas utilities which are little known or understood. These companies are commonly called Section 7(f) companies. Section 7(f) companies are essentially Local Distribution Companies (LDCs) which, through the natural growth of their service areas, own and operate retail distribution facilities which cross state lines, and which have received a service area determination from the FERC pursuant to Section 7(f) of the NGA. In the absence of a Section 7(f) service area determination, these LDCs would, because their facilities cross state lines, be required to obtain individual authorizations from the FERC to add delivery taps or construct transmission lines to serve their retail customers. The grant of a Section 7(f) service area determination permits these companies to construct facilities anywhere within the service area without the need for obtaining additional individual authorization from the FERC.

Through remarkable foresight, the drafters of Section 7(f) anticipated the need for service area determinations and for a mechanism permitting the FERC to remove itself from areas where federal

regulation was neither necessary nor appropriate. So long as the Section 7(f) company operated in its historical role as a merchant selling gas to retail customers, the grant of a Section 7(f) determination essentially permitted the company to operate its facilities and serve its distribution customers subject only to the jurisdiction of the relevant state commissions.

What the drafters of the NGA could not have forseen, however, is the relatively recent rise in the number of LDCs providing transportation services to their retail customers. For the vast majority of LDCs in this country, the terms and conditions of sale or transportation service to their retail customers appropriately remains subject to the exclusive jurisdiction of state public service commissions. For eight of these LDCs, however, regulatory jurisdiction over the retail transportation of gas is now subject to the unnecessary and unduly burdensome dual regulation of the FERC and the relevant state commissions for the sole reason that, by geographic happenstance, their retail local distribution facilities cross state lines.

In a 1987 order involving Washington Gas Light Company (WGL), the FERC determined that the NGA required it to regulate WGL's transportation through its "high pressure" transmission lines and those "low pressure" lines which cross state borders. In recognition of the local distribution exemption under Section 1(b) of the NGA, the FERC left to the state commissions jurisdiction over the company's transportation through the remaining low pressure lines. As a result, both federal and state commissions will be applying what will very

likely be different terms, conditions, and policies to segments of the same transportation service.

The FERC's bifurcation of jurisdiction over WGL's retail transportation services, although perhaps mandated by the NGA, is illogical and contrary to public policy. Depending upon the configuration of a company's system and the view of what constitutes a high pressure and low pressure line, it is entirely possible that a transportation service within a single company may be subject to state regulation alone, federal regulation alone, or both. Thus, three customers served by different segments of the same Section 7(f) company could well end up paying three different rates for what in their eyes are identical services.

More fundamentally, however, NARUC firmly believes that all of an LDC's services to its retail customers, regardless of whether it is sales or transportation, should be left exclusively to state commissions. The Section 7(f) company's transportation of gas to a retail customer uses the same facilities, involves the same parties, and raises the same cost allocation and public interest issues as would a sale to that same customer. There should be no question that a Section 7(f) company's transportation to one of its retail customers is, and should be treated as, part of the company's local distribution functions. Establishing appropriate terms, conditions, and rates for retail transportation services requires a detailed knowledge of the operational and financial aspects of an LDC and a sensitivity to the unique economic needs of the communities it serves. Clearly, state

commissions, as a result of years of experience in regulating the company's retail sales, have a much broader understanding of these considerations and are far better equipped to regulate their retail transportation services than is the FERC.

NARUC strongly supports this legislation, subject to two modifications. By clarifying existing law, S. 1717 furthers one of the prime tenets of NARUC: that all of an LDC's rates and services to its retail customers are matters of local concern, which should be left exclusively to state regulation. However, we urge that the provision of S. 1717 which gives state commissions exclusive jurisdiction only if the company so elects be deleted. Given the significant local interests affected by such matters, exclusive state jurisdiction over the retail transportation of gas should be mandatory and not optional to the companies involved.

We further suggest that the provisions of S. 1717 be amended so that its provisions affect only transportation to the retail customers of a Section 7(f) company. Apparently a number of the existing Section 7(f) companies have received blanket certificates from the FERC authorizing the transportation of gas to interstate pipelines for ultimate consumption by end-users located in other states. Such transportation services to "off-system" end-users should continue to be regulated by the FERC. Limiting state commission jurisdiction under the bill to transportation customers served directly by the Section 7(f) company would appropriately preserve the FERC's existing jurisdiction over the company's off-system transportation services

provided under FERC-issued blanket certificates.

With the above modifications, S. 1717 will restore the delicate balance between state and federal regulatory spheres which has historically been maintained under the NGA, and will return to the affected states the ability to adequately regulate the retail rates and services of LDC's for the protection and benefit of the public interest. NARUC urges the Congress to enact this important legislation into law as expeditiously as possible.

Similarly, we urge Congress' attention to legislation on natural gas bypass which presents similar, yet larger, conflicts with regard to federal-state jurisdiction.

Again thank you for providing the opportunity to submit NARUC views on this matter.

Resolution Endorsing Legislation to Affirm State Jurisdiction Over Transportation by Multi-Jurisdictional Gas Distribution Companies

WHEREAS, The services and operations of State regulated gas utilities are uniquely local in nature and are, in some limited instances, provided in contiguous States by means of fully integrated systems which are designed for the sole purpose of providing distribution services in those contiguous States; and

WHEREAS, The transportation rates and services offered by such local distribution companies to end-users ought to be subject to the exclusive regulatory jurisdiction of the same regulatory body that regulates their retail sales rates; and

WHEREAS, State jurisdiction over such local distribution companies' transportation rates and services would be indisputable but for the multi-State presence of their local distribution systems; and

WHEREAS, The Federal Energy Regulatory Commission, in Docket No. CP86-693-000, declined to disclaim jurisdiction over the local transportation of customer-owned gas by such a local distribution company; now, therefore, be it

RESOLVED, That the Executive Committee of the National Association of Regulatory Utility Commissioners (NARUC), assembled in its Summer Committee Meeting in San Francisco, California, endorses and urges the U.S. Congress to enact legislation to assure uniformity in the exercise of regulatory jurisdiction pertaining to the transportation of natural gas and to clarify that the local transportation of natural gas by a distribution company is a matter within State jurisdiction and subject to regulation by State commissions.

Sponsored by the Committee on Gas
Adopted July 23, 1987
Reported NARUC Bulletin No. 31-1987, pages 17-18

Senator BUMPERS. Thank you very much, Dr. Johnston.

Let me, first of all, say that I want to try to understand how this bill works in the real world. What if the Arkansas Commission approves one transportation rate and a neighboring state approves a different rate? Is that a problem?

Dr. JOHNSTON. I don't think it is, Mr. Chairman. That is the situation today with regard to sales of the gas companies involved, but it's the situation also today with regard to electric utilities and telephone utilities that operate. Southwestern Bell would be the example. There are often slight differences across state lines. There are seldom major differences. Oftentimes state commissions will be respectful of a state commission across the boundary that has the majority of a company in it. And I think in Arkansas the general telephone company in Texarkana—we accept their rates in Texarkana, Arkansas as set by the Texas Commission. There are minor differences, but not major differences.

I don't think that customers would have as much problem with that as they have facing differences of having Federal, state and both jurisdictions in setting transportation rates.

Senator BUMPERS. Does ARKLA serve Texarkana?

Dr. JOHNSTON. ARKLA? I believe so.

Senator BUMPERS. So, they serve Texarkana, Texas and Texarkana, Arkansas.

Dr. JOHNSTON. I believe so. I'm not certain of that. In the two examples here, Arkansas-Oklahoma Gas serves Ft. Smith, Arkansas, and it also serves in eastern Oklahoma. And western Arkansas is set by the Arkansas Commission. Eastern Oklahoma is set by the Oklahoma Corporation Commission in sales, and it has been that way in transportation rates as well.

Senator BUMPERS. In the Washington Gas Light case, for example, Washington Gas Light serves Maryland, Virginia and D.C. Now, let's assume that I am a manufacturer or whatever but, say, I have fairly significant or substantial facilities in each one of the three jurisdictions. Now, that would mean that I might pay very widely disparate rates in these three jurisdictions, does it not?

Dr. JOHNSTON. Potential but not probable, Senator. I'm not familiar with the specifics of Washington Gas Light.

Senator BUMPERS. This is a hypothetical. It is not likely to be widely disparate, but it could be.

Dr. JOHNSTON. It could. I am more familiar in Arkansas, and Arkansas Western Gas who is here today to testify serves or seeks to serve a few customers in eastern Oklahoma. They are buying Associated Natural Gas from Arkansas Power and Light which serves customers in Missouri. There could be differences, but in those instances, I think they would be slight.

Senator BUMPERS. I'm amazed that there are just a handful of companies that this bill really applies to. And I don't think there's any opposition to it, and I think it's going to pass without any difficulty. But I am amazed that so few LDCs are in this situation.

Dr. JOHNSTON. The two gas companies that are here might testify to it, and Washington Gas Light does serve in the three areas. But there has been I think some hesitancy in LDCs in slipping over state lines because of the uncertainties about getting into other

state jurisdictions and also moving into FERC jurisdiction. This would clarify this and help it I think.

Senator BUMPERS. FERC is going to testify this morning and in their testimony they say that they feel FERC ought to retain authority to "prescribe conditions applicable to interstate transportation and to remedy any unduly discriminatory practices." How do you feel about them retaining jurisdiction under that phrase of 7(f) companies?

Dr. JOHNSTON. Not having the language in front of me, I have some hesitancy, as I understood what you read. The Arkansas Commission and the National Association of Regulatory Utility Commissioners doesn't have any problem with FERC continuing to regulate the sale for resale of these 7(f) companies, as in my testimony. I'm not sure what—and I'll listen very carefully to the FERC testimony to see if I can understand what they mean on that. I would rather reserve judgment.

Senator BUMPERS. Well, you know, lawyers look at these words fairly carefully, and it says "and to remedy any unduly discriminatory practices." "Unduly" is big enough to drive a wagon team through, isn't it?

Well, as introduced the bill says it makes the—listen to this—"rates and charges for such transportation subject to regulation by the state commission in the state in which the gas is consumed." Now, let me ask you, Dr. Johnston, would it be preferable to simply say that the rates and charges would be subject to regulation by the state commissions in which the service area is located?

Dr. JOHNSTON. I think that would be equivalent, Senator, yes.

Senator BUMPERS. Does your organization that you represent here today have a different view of this bill? I mean, are there some changes they would like to make in it?

Dr. JOHNSTON. Well, the two changes that I outlined in my testimony——

Senator BUMPERS. That you outlined in your testimony? Is that it?

Dr. JOHNSTON. Yes, sir. In S. 1717, as introduced, it gave the option to the LDC. That should be struck. Strike the phrase "upon election of such person, be subject to" and insert in its place the phrase "be subject to exclusive state jurisdiction," and to amend the bill to clarify that it's only for transportation service to the ultimate consumers, not when there is transportation on behalf of the pipeline where the consumers are in another state or off-system sale.

Senator BUMPERS. Do you have statutory language from NARUC on your second proposal? Do you have statutory language for the change you want to make, the second change you want to make?

Dr. JOHNSTON. Yes, sir.

Senator BUMPERS. Okay. Dr. Johnston, those are my questions. I thank you very much. It's good testimony.

Dr. JOHNSTON. Thank you.

Senator BUMPERS. Our next witness is Mr. Robert Christin, Assistant General Counsel, Certificates Branch of FERC, and he is accompanied by Mr. Robert J. Cupina, Deputy Director, Division of Pipeline Certificates, Office of Pipeline and Producer Regulation of

FERC. Mr. Christin, welcome to the committee. Please proceed with your testimony.

STATEMENT OF ROBERT F. CHRISTIN, ASSISTANT GENERAL COUNSEL, CERTIFICATES BRANCH, FEDERAL ENERGY REGULATORY COMMISSION, ACCOMPANIED BY ROBERT J. CUPINA, DEPUTY DIRECTOR, DIVISION OF PIPELINE CERTIFICATES, OFFICE OF PIPELINE AND PRODUCER REGULATION

Mr. CHRISTIN. Thank you, Mr. Chairman. I appreciate this opportunity to appear before you to testify on S. 1717. I would note that my views are those of the Commission staff and they don't necessarily represent the views of the Commission or any individual commissioner.

As I understand S. 1717, it would allow two classes of natural gas companies to choose state, as opposed to Federal regulation of rates and charges for the transportation of natural gas. The first class consists of those companies who have received a service area determination under section 7(f) of the Natural Gas Act. S. 1717 also applies to any company which transports gas solely on a retail basis utilizing a gas pipeline of which the FERC certificated portion was less than 30 miles as of December 31, 1960.

As I indicated, in the FERC staff report submitted by Chairman Hesse to Chairman Johnston, a copy of which is attached to the filed copy of my testimony, there are presently eight section 7(f) companies, and there's also one other company whose certificated facilities were less than 30 miles in 1960. Four of the 7(f) companies currently transport gas for third parties within their respective service areas pursuant to transportation certificates issued by the Commission. The company whose facilities are less than 30 miles long also transports gas under a Commission certificate.

Under the proposed legislation, these five companies and any 7(f) companies receiving transportation certificates in the future will be able to elect state regulation of transportation rates without the present requirement of obtaining Commission approval of those rates.

All of the affected companies transport gas across state lines and, therefore, remain subject to the jurisdiction of the Commission over interstate transportation. Presumably the Commission would retain its authority to attach conditions to transportation certificates issued to such companies and would also retain its Natural Gas Act authority to preclude or remedy any unduly discriminatory practices. Also, as I read the proposed legislation, it apparently is not intended to expand the availability of section 7(f) service area designations beyond the physical and geographic configurations which have already received such designations.

I would like to point out two areas where the bill, as drafted, may be subject to some inconsistent interpretations. First, section 2 provides that the transportation rates in a 7(f) service area will be set by the state in which the gas is consumed. Since a 7(f) company holding a transportation certificate may transport gas through its service area for ultimate delivery and consumption outside of the service area, the transportation rates could be set in a state that is far removed from the state where the transportation was per-

formed by the 7(f) company. This could be cured by clarifying that the bill applies only to transportation of gas that is consumed within the service area. Alternatively, the language could be changed to provide that transportation rates would be set by the states in which the 7(f) facilities are located.

The reference to gas that is transported solely on a retail basis may also be susceptible to more than one interpretation. The concept of retail sales is familiar to those who are involved in pipeline regulation, but transportation is not commonly referred to as retail. The phrase seems to refer to gas that is owned by the end user and not the transporter and that is transported for consumption by that end user and not for resale. Some clarification of this phrase may be helpful.

Thank you, Mr. Chairman. That concludes my comments. I'd be happy to answer any questions you have about the proposed legislation.

[The prepared statement of Mr. Christin follows:]

STATEMENT OF

ROBERT F. CHRISTIN

ASSISTANT GENERAL COUNSEL
PIPELINE CERTIFICATES

FEDERAL ENERGY REGULATORY COMMISSION

ON

S.1717

"THE UNIFORM REGULATORY JURISDICTION ACT OF 1987"

BEFORE THE

SUBCOMMITTEE ON ENERGY REGULATION AND CONSERVATION

UNITED STATES SENATE

JUNE 14, 1988

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, MY NAME IS ROBERT F. CHRISTIN, AND I AM THE ASSISTANT GENERAL COUNSEL FOR PIPELINE CERTIFICATES AT THE FEDERAL ENERGY REGULATORY COMMISSION. I APPRECIATE THIS OPPORTUNITY TO APPEAR BEFORE YOU TODAY TO TESTIFY ON S.1717, A BILL TO PROVIDE FOR STATE REGULATION OF RATES AND CHARGES FOR THE TRANSPORTATION OF NATURAL GAS IN INTERSTATE COMMERCE IN SOME CIRCUMSTANCES.

MY VIEWS ARE THOSE OF THE COMMISSION STAFF, AND DO NOT NECESSARILY REPRESENT THE VIEWS OF THE CHAIRMAN, THE COMMISSION, OR ANY INDIVIDUAL COMMISSIONER.

AS I UNDERSTAND S.1717, AS PROPOSED, IT ALLOWS TWO CLASSES OF NATURAL GAS COMPANIES TO CHOOSE STATE, AS OPPOSED TO FEDERAL, REGULATION OF RATES AND CHARGES FOR THE TRANSPORTATION OF NATURAL GAS. THE FIRST CLASS CONSISTS OF THOSE COMPANIES WHO HAVE RECEIVED A SERVICE AREA DETERMINATION PURSUANT TO SECTION 7(f) OF THE NATURAL GAS ACT (NGA). S.1717 ALSO APPLIES TO ANY COMPANY WHICH "TRANSPORTS GAS SOLELY ON A RETAIL BASIS UTILIZING A GAS

PIPELINE OF WHICH THE FEDERAL ENERGY REGULATORY COMMISSION CERTIFICATED PORTION WAS LESS THAN 30 MILES LONG AS OF DECEMBER 31, 1960".

AS INDICATED IN THE FERC STAFF REPORT SUBMITTED BY CHAIRMAN HESSE TO CHAIRMAN JOHNSTON (A COPY OF WHICH IS ATTACHED), THERE ARE PRESENTLY EIGHT SECTION 7(f) COMPANIES. THERE IS ALSO ONE OTHER COMPANY WHOSE CERTIFICATED FACILITIES WERE LESS THAN 30 MILES LONG IN 1960. FOUR OF THE 7(f) COMPANIES CURRENTLY TRANSPORT GAS FOR THIRD PARTIES WITHIN THEIR RESPECTIVE SERVICE AREAS, PURSUANT TO TRANSPORTATION CERTIFICATES ISSUED BY THE COMMISSION. THE COMPANY WHOSE FACILITIES ARE LESS THAN 30 MILES LONG ALSO TRANSPORTS GAS UNDER A COMMISSION CERTIFICATE.

UNDER THE PROPOSED LEGISLATION, THESE FIVE COMPANIES, AND ANY 7(f) COMPANIES RECEIVING TRANSPORTATION CERTIFICATES IN THE FUTURE, WOULD BE ABLE TO ELECT STATE REGULATION OF TRANSPORTATION RATES WITHOUT THE PRESENT REQUIREMENT OF OBTAINING COMMISSION APPROVAL OF THOSE RATES.

ALL OF THE AFFECTED COMPANIES TRANSPORT GAS ACROSS STATE LINES AND THEREFORE REMAIN SUBJECT TO THE JURISDICTION OF THE COMMISSION OVER INTERSTATE TRANSPORTATION. PRESUMABLY, THE COMMISSION WOULD RETAIN ITS AUTHORITY TO ATTACH CONDITIONS TO TRANSPORTATION CERTIFICATES ISSUED TO SUCH COMPANIES AND WOULD ALSO RETAIN ITS NATURAL GAS ACT AUTHORITY TO PRECLUDE OR REMEDY ANY UNDULY DISCRIMINATORY PRACTICES. ALSO, AS I READ THE PROPOSED LEGISLATION, IT APPARENTLY IS NOT INTENDED TO EXPAND THE AVAILABILITY OF SECTION 7(f) SERVICE AREA DESIGNATIONS BEYOND THE PHYSICAL AND GEOGRAPHIC CONFIGURATIONS WHICH HAVE ALREADY RECEIVED SUCH DESIGNATIONS.

I WOULD LIKE TO POINT OUT TWO AREAS WHERE THE BILL, AS DRAFTED, MAY BE SUBJECT TO INCONSISTENT INTERPRETATIONS. FIRST, SECTION 2 PROVIDES THAT THE TRANSPORTATION RATES IN A 7(f) SERVICE AREA WILL BE SET BY THE STATE IN WHICH THE GAS IS CONSUMED. SINCE A 7(f) COMPANY HOLDING A TRANSPORTATION CERTIFICATE MAY TRANSPORT GAS THROUGH ITS SERVICE AREA FOR ULTIMATE DELIVERY AND CONSUMPTION OUTSIDE THE 7(f) SERVICE AREA,

THE TRANSPORTATION RATES COULD BE SET IN A STATE FAR REMOVED FROM THE STATE WHERE THE TRANSPORTATION IS PERFORMED BY THE 7(f) COMPANY. THIS COULD BE CURED BY CLARIFYING THAT THE BILL APPLIES ONLY TO TRANSPORTATION OF GAS THAT IS CONSUMED WITHIN THE SERVICE AREA. ALTERNATIVELY, THE LANGUAGE COULD BE CHANGED TO PROVIDE THAT TRANSPORTATION RATES WOULD BE SET BY THE STATES IN WHICH THE 7(f) FACILITIES ARE LOCATED.

THE REFERENCE TO GAS THAT IS TRANSPORTED "SOLELY ON A RETAIL BASIS" MAY ALSO BE SUSCEPTIBLE TO MORE THAN ONE INTERPRETATION. THE CONCEPT OF "RETAIL SALES" IS FAMILIAR TO THOSE WHO ARE INVOLVED IN PIPELINE REGULATION, BUT TRANSPORTATION IS NOT COMMONLY REFERRED TO AS "RETAIL". THE PHRASE SEEMS TO REFER TO GAS THAT IS (1) OWNED BY THE END USER AND NOT BY THE TRANSPORTER AND (2) TRANSPORTED FOR CONSUMPTION BY THAT END USER AND NOT FOR RESALE. SOME CLARIFICATION OF THIS PHRASE MAY BE HELPFUL.

THANK YOU MR. CHAIRMAN, THIS CONCLUDES MY COMMENTS. I WOULD BE HAPPY TO ANSWER ANY QUESTIONS YOU HAVE ABOUT THE PROPOSED LEGISLATION.

FEDERAL ENERGY REGULATORY COMMISSION
STAFF REPORT AND COMMENTS ON S.1717

Summary of Legislation

As proposed, the Uniform Regulatory Jurisdiction Act of 1987, S.1717, would allow two classes of persons to choose state, as opposed to federal, regulation of rates and charges for the transportation of natural gas in interstate commerce:

(1) those persons transporting natural gas in a service area determined by the Commission pursuant to section 7(f) of the Natural Gas Act (NGA); and

(2) those persons transporting natural gas solely on a retail basis utilizing a gas pipeline, the Commission certificated portion of which was less than 30 miles long as of December 31, 1960. The transportation rates would be regulated by the state in which the gas is consumed.

Section 7(f) Companies

The following natural gas companies hold service area designations pursuant to section 7(f) of the NGA:

COMPANY	CITATION TO COMMISSION ORDER
*Washington Gas Light Co.	28 FPC 753 (1962)
Blacksville Oil and Gas Co.	37 FPC 502 (1967)
Great River Gas Co.	14 FERC ¶ 61,167 (1981)
Shenandoah Gas Co.	16 FERC ¶ 61,087 (1981)
*Arkansas Oklahoma Gas Corp.	33 FERC ¶ 61,197 (1985)
*Iowa-Illinois Gas and Electric Co.	39 FERC ¶ 61,016 (1987)
High Plains Natural Gas Co.	41 FERC ¶ 61,364 (1987)
*Associated Natural Gas Co.	43 FERC ¶ 61,304 (1988)

Each of the companies listed above sells gas at retail in its service area. In each case, the company acts primarily as a local distributor in an area which happens to straddle a state line. In each case, the company makes no sales for resale and the gas received in each service area is ultimately consumed within that service area. In each case the retail sales rates and services within the service area are subject to state regulation. In each case, the company is subject to Commission jurisdiction only because its system physically crosses state lines.

The asterisks denote those companies that are currently providing transportation to end users in their service areas pursuant to blanket transportation certificates issued by the

Commission. (In addition, Shenandoah Gas Company has filed an application for such certificate in Docket No. CP88-278-000, pending before the Commission.) Therefore, any of those 7(f) companies now providing transportation services, or any other 7(f) companies that receive such transportation authority from the Commission in the future, may elect to be subject to rate regulation in the state where the gas is consumed if S.1717 is enacted as proposed. S.1717 apparently is not intended to expand the availability of section 7(f) service area designations beyond the physical and geographic configurations which have already received such designations.

Typically, those companies holding blanket certificates transport gas to retail customers in their respective service areas on behalf of interstate pipelines selling or transporting the gas to those retail customers. Those 7(f) companies also have the authority to transport gas through their service areas on behalf of interstate or intrastate pipelines for ultimate consumption outside the service area to the extent that geography, markets, and contractual agreements combine to make such transportation beneficial to the parties.

Other Affected Companies

The only company apparently affected by Section 2(2) of S.1717 is Interstate Power Company, a gas and electric utility company operating in Iowa, Minnesota and Illinois. In a declaratory order issued July 24, 1986 (Interstate Power Company, 36 FERC ¶ 61,127), the Commission found that even though Interstate Power functions primarily as a local distribution company, a transportation arrangement with Hawkeye Chemical Company was in interstate commerce, and thus subject to the Commission's jurisdiction under the NGA. The proposed law would allow Interstate Power to choose state regulation of its transportation rates and charges. The transportation itself, to the extent that it is interstate transportation, would remain subject to Commission jurisdiction.

Comments

The NGA establishes a comprehensive and complementary scheme for the regulation of natural gas services and rates between the Commission and the various state regulatory agencies. Under section 1(b) of the NGA, the Commission's jurisdiction extends to "the transportation of natural gas in interstate commerce of natural gas for resale ... and to natural gas companies engaged in such transportation or sale...." The state regulatory commissions have jurisdiction over "any other transportation or sale of natural gas" and over "the local distribution of natural gas [and] the facilities used for much distribution...."

The section 7(f) determination is simply a procedure whereby a company acting essentially as a local distribution company may modify or enlarge its facilities subject to the Commission's jurisdiction without the necessity of seeking individual authorizations for each change of facilities. Because the Commission does not regulate the rates for retail sales by natural gas companies (see, e.g., F.P.C. v Louisiana Power & Light Co. 406 U.S. 621 (1972)), the practical effect of section 7(f) is to exempt from federal regulation companies that distribute gas in more that one state. Nevertheless, section 7(f) only refers to construction activities. It does not affect the Commission's responsibility to regulate transportation in interstate commerce. Thus, where a 7(f) company has sought to provide transportation of customer-owned gas, the Commission has found that it is subject to the same regulations that apply to transportation by any interstate pipeline. E.g. Washington Gas Light Company 39 FERC ¶ 61, 119 (1987), rehearing granted in part and denied in part, 40 FERC ¶ 61, 361 (1987).

As a result, some of the companies with a 7(f) designation have also applied for and received from the Commission blanket transportation authority to transport customer-owned gas within the 7(f) service area. In recognition of the special circumstances of these companies, the Commission has granted waivers of various requirements under Part 284 of its regulations to allow these companies to operate under the less burdensome rates applicable to local distribution companies that wish to perform certain limited jurisdictional transportation. E.g. Iowa Illinois Gas and Electric Co., 39 FERC ¶ 61,016 (1987). These regulations allow a local distribution company that receives a blanket certificate under section 284.224 to choose among several rate options, subject to Commission approval. Specifically, the company may choose to base its rates on the same methodology used in designing its state-approved rates, or it may seek Commission approval of rates for specific transactions. 18 C.F. R. § 284.224 (d)(2).

S.1717 would allow section 7(f) companies to choose to be subject to state rate regulation without Commission approval. Apparently, however, S.1717 as currently drafted would not change the Commission's jurisdiction over the interstate transportation of natural gas. Thus, even if a company chose to have its rate regulated by a state, it would still need authorization from the Commission to provide transportation of the gas in the first place. Under the Natural Gas Act the Commission has authority to prescribe conditions applicable to interstate transportation and to remedy any unduly discriminatory practices. Presumably, the Commission would retain this authority over companies subject to S.1717.

There are several areas where the bill, as drafted, may be subject to inconsistent interpretations. Section 2 provides that the rate for transportation in a 7(f) service area may be regulated by the state in which the gas is consumed, at the election of the 7(f) company. However, a company operating under section 7(f) might transport gas in its service area to an interstate pipeline for subsequent transportation and consumption outside of the 7(f) service area. Under these circumstances, rates for transportation of gas ultimately consumed outside the states containing the service area would be set by the state in which the gas is consumed. This could be cured by clarifying that the bill applies only to transportation of gas that is consumed within the service area. Alternatively, the language could be changed to provide that transportation rates would be set by the states in which the 7(f) company's facilities are located.

The reference to gas that is transported "solely on a retail basis" may also be susceptible to more than one interpretation. The concept of "retail sales" is familiar to those who are involved in pipeline regulations, but transportation is not commonly referred to as "retail". The phrase seems to refer to gas that is (1) owned by the end user and not by the transporter and (2) transported for consumption by that end user and not for resale. Some clarification of this point may be worthwhile.

Finally, the proposed legislation would not affect the applicability of Federal environmental laws to affected companies or their service areas.

Senator BUMPERS. Thank you very much, Mr. Christin.

Let me ask you. We sent a letter to Chairman Hesse requesting an answer from her as to whether or not she supported the enactment of the legislation. I get the impression from your testimony you favor it with certain conditions. Is that correct?

Mr. CHRISTIN. Maybe it would be more correct to say that we don't necessarily oppose it. The Commission itself hasn't taken a position one way or the other, but nobody sees any adverse effect on the public interest.

Senator BUMPERS. Well, if we changed the bill to retain authority in FERC to "prescribe conditions applicable to interstate transportation and to remedy any unduly discriminatory practices," that sort of renders the bill a nullity, doesn't it?

Mr. CHRISTIN. That statement was simply my interpretation of how the bill is drafted right now. I didn't mean it to recommend that the bill necessarily be changed or not. But the way it is written, it only exempts from FERC jurisdiction the rates and charges. As it is drafted, transportation still remains under FERC jurisdiction.

Senator BUMPERS. Well, of course, the bill is designed to take FERC out, and if we leave anything, then we have effectively—I mean, there's really no point in passing the bill if we're going to give you an override.

Mr. CHRISTIN. If you want to take FERC completely out, then I would suggest some drafting changes in the bill to change rates and service——

Senator BUMPERS. You're saying that the bill as presently drafted would still leave override authority in FERC on transportation?

Mr. CHRISTIN. It would leave certificate authority over transportation, yes, sir.

Senator BUMPERS. Can you think of any negative impacts the bill would have on producers or consumers or pipelines?

Mr. CHRISTIN. No. It seems to me it would put the eight 7(f) companies in exactly the same position as local distribution companies are now, with the exception that as it's drafted there is still some certificate jurisdiction in FERC.

Senator BUMPERS. And in your accompanying information, you list—let's see—eight companies who presently hold section 7(f) designations. And my question is do you know of any other potential candidates for 7(f) status.

Mr. CHRISTIN. No.

Senator BUMPERS. They just haven't applied.

Mr. CHRISTIN. Right. The only companies that would be potential candidates I would think would be local distribution companies located near a state line that wanted to somehow extend their facilities over the state line. And we really don't know how many there might be. I wouldn't think there would be many. Since 1962 when we issued the first 7(f) designation, there have only been these eight candidates.

Senator BUMPERS. Do you know of any application for 7(f) designations that have been turned down in the last several years?

Mr. CHRISTIN. Not since 1962, no.

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Senator BUMPERS. And you don't know of any companies who might technically meet the criteria but just simply haven't applied?

Mr. CHRISTIN. I don't know of any.

Let me amend that. Interstate Power might meet the criteria.

Senator BUMPERS. Would you be kind enough to furnish the Commission with a revised version of the bill as you would like it to be worded? Or would you rather just stand on your testimony and let us deal with it?

Mr. CHRISTIN. Well, we don't really have a position.

Senator BUMPERS. You don't want to make suggested statutory changes in it? You're just talking generally about changes that you would like to see?

Mr. CHRISTIN. It really depends——

Senator BUMPERS. I'm just asking if you would like to put some lawyer language in here to change it.

Mr. CHRISTIN. We could submit some langauge that I think reflects the purposes that we understand you're trying to achieve. I mentioned two points that I thought could use some clarification, just technical matters, and we could submit some language on those.

Senator BUMPERS. Do you know of any effect that the enactment of this bill might have on transactions under section 311-312 of NGPA?

Mr. CUPINA. Senator, under 311, many of these 7(f) companies have asked for declarations in their 7(f) order, that the Commission treat them as LDCs for 311 purposes, in other words, to ensure that they can receive gas for their own account, for their own system supply under 311 as a shipper. So, nothing you're doing here would change that. They would continue to be treated as LDCs.

The other aspect of 311 is that the certificates that the 7(f) companies have now, the blanket certificates which they use to transport gas, are really fashioned after the 311 regulations that the intrastate pipelines use. So, by backing off of those certificates and not requiring Commission jurisdiction, those 311 type of transactions would be reduced.

Senator BUMPERS. Mr. Cupina, as long as we are passing this bill dealing with 7(f) companies, can you think of anything else that ought to be added, any other problems with 7(f) companies that ought to be covered under this legislation? That's just a generic question. I'm not suggesting there are.

Mr. CUPINA. No, I can't.

Mr. CHRISTIN. Senator, could I add to his answer to your previous question about potential effects on 311? It depends. If you pass the bill as it is currently drafted, I agree with Mr. Cupina. If you amend it to take FERC out completely—hat is, remove its transportation jurisdiction over these pipelines—then the open access provisions of 311 that currently apply under the blanket certificates that the four transporting companies have would no longer apply, and they would be completely under the local commission's jurisdiction. In other words, access would be determined by the local commission.

Senator BUMPERS. Right. States could take care of it then, couldn't they?

Mr. CHRISTIN. Yes.

Senator BUMPERS. Gentlemen, thank you both very much for being with us this morning.

Mr. CHRISTIN. Thank you.

Senator BUMPERS. Our last witnesses is a panel: Mr. Charles Scharlau, Chairman of the Associated Natural Gas Company, which is a division of Arkansas Western; and Mr. Patrick J. Maher, President, Washington Gas Light Company.

Is that the correct pronunciation?

Mr. MAHER. That's correct, Senator.

Senator BUMPERS. Charles, welcome to the committee this morning. We're glad to have you and please proceed.

STATEMENT OF CHARLES E. SCHARLAU, CHAIRMAN, ASSOCIATED NATURAL GAS CO., ARKANSAS WESTERN GAS CO.

Mr. SCHARLAU. Thank you very much, Senator.

On behalf of Associated Natural Gas Company, which is as of June 1 a division of Arkansas Western Gas Company, I want to thank you for this opportunity testify in support of S. 1717. As the Senator knows, Arkansas Western has served natural gas customers in northwest Arkansas since 1929, including the City of Charleston.

Senator BUMPERS. Hooray.

Mr. SCHARLAU. It obtains its supply from gas fields in western Arkansas, sells it through its local distribution system to approximately 80,000 customers, all in Arkansas. Effective with June 1, it acquired Associated by merger and will operate it as a separate division. The facilities of the two are not interconnected, and I am chairman of the board and chief executive officer of both.

Although Arkansas Western is not a section 7(f) company, the Associated division is such a company. It owns and operates 11 separate systems in Arkansas and Missouri obtaining its gas supply from major interstate pipelines either by purchase or transportation. It sells the gas through its system to 62,000 retail customers in Arkansas and Missouri. One of the systems consists of a relatively short interstate line which crosses the Arkansas-Missouri border and is covered by a section 7(f) service area determination.

Associated operates primarily as a local distribution company. Its service and operations are the same as a company located within a single state. That particular line consists of 44 miles of 10 inch pipe running near Blytheville, Arkansas to near Campbell, Missouri. It's an integral part of an integrated local distribution system of 123 miles, which also has 2, 4, 6, and 8 inch lines serving at retail 28,200 of those customers in Arkansas and Missouri.

Technically, since the line crosses the Arkansas-Missouri border, Associated is considered subject to the Natural Gas Act. All its rates and services are regulated by the public service commissions of Arkansas and Missouri. Associated provides intrastate transportation in Missouri—that is, service which does not use the intestate line—to some industrial customers subject to regulations of the Missouri commission. Recently FERC issued Associated an order number 63 blanket certificate authorizing Associated's interstate transportation of gas.

We support S. 1717 and urge its passage. Your prompt response to the problems of 7(f) companies is appreciated. These problems recently arose as a result of certain FERC decisions during the past year. As has been discussed, section 7(f) of the Natural Gas Act authorizes the FERC to grant service area determinations within which the company may enlarge or extend its facilities without further authorization from the Commission. They are essentially a local distribution companies which have facilities that happen to cross a state line. They are not long-line transmission facilities, and since they are not engaged in sales for resale, all the rates and services historically have been subject exclusively to state regulation.

Since their facilities do cross a state line, FERC in absence of 7(f) determination, would regulate the construction of facilities under section c7 of the Natural Gas Act even though the company's services are the same as the other local distribution companies. By granting the 7(f) determinations, FERC has removed an unnecessary and burdensome layer of regulation and permitted companies like ours and Washington Gas Light to operate like any other local distribution company. With the advent of the spot sales market and open access transportation, the FERC's ability to avoid being unnecessarily involved in the companies' intrastate services has ended.

FERC, in an attempt to define and limit jurisdiction over transportation by 7(f) companies to their retail customers, in a case involving my companion, Washington Gas Light, limited its jurisdiction over transportation to the company's high pressure line and those low pressure lines across state lines. It left transportation services through the remaining low pressure lines to state regulation.

Where there are currently defined city gates or one or two distribution centers, the use of such a test may be possible. But for companies like ours which operate highly integrated systems of transmission and distribution lines which are often intertwined and with ill-defined distribution centers, distinguishing based on pressure is impossible.

Besides being unworkable, there are fundamental policy issues raised by the assertion of Federal jurisdiction over distribution of gas which 7(f) companies have for years provided to their retail customers under rates, terms and conditions subject exclusively to the jurisdiction of state commissions. The only distinction between the sales service and transportation service to those retail customers is who holds title to the gas being delivered. Regardless of whether the service being provided is sales or transportation, the same retail customers are being served and the same local distribution facilities are being used. Both types of service raise cost allocation issues and require an examination of the impact of the service on the company's other customers.

FERC's jurisdiction over 7(f) companies' retail transportation services deprive state commissions of their ability to adequately regulate the rates and services of local distribution companies. This unnecessary regulation of a company's retail operations could jeopardize the company's ability to provide service at the lowest reasonable cost.

Because FERC does not have jurisdiction over a 7(f) company's retail sales, it's not equipped to handle or comprehend the potential ramifications of a gas utility's transportation service on the company's other utility operations. State commissions with their long experience and in-depth knowledge of the company's retail service are in a better position to insure the rates, terms and conditions of a particular retail service are in the best interest of the company's customers as a whole.

S. 1717 removes the uncertainties of the FERC Washington Gas Light decision, and provides a clear statutory basis for FERC to continue its policy of treating 7(f) companies like all other distribution companies. Though gas may cross a state line in the distribution process, the essential fact is that retail transportation services of such companies are primarily local matters best left to the states. Until now, the Natural Gas Act has proven flexible enough to give Federal regulators the room to respond to the tremendous changes in the natural gas industry. S. 1717 removes an area where it is inadequate to meet the changes created by the new service of transportation by intrastate companies.

No one has opposed it or the nearly identical legislation which was unanimously approved by the House just yesterday. I would like to point out that H.R. 2884 was amended both by the House subcommittee and on the House floor just prior to being voted upon by the full House. I believe that these changes respond to the two technical concerns raised by Mr. Christin and the concerns raised by Chairman Johnston. H.R. 2884, as finally amended, removes all aspects of a section 7(f) company's retail transportation and not just jurisdiction over the transportation rates and services. These changes I believe took out the company's ability also to opt out or in the FERC jurisdiction.

So, in light of the concerns raised by Mr. Christin and Chairman Johnston, given the purpose of the legislation to return to the states the regulatory jurisdiction over all aspects of an LDCs retail rates and services, I believe that similar amendments to S. 1717 would be appropriate and should be made.

The universal support that this legislation seems to be having stems from the fact that it reflects common sense and good policy. It will eliminate the confusion between Federal and state regulatory jurisdiction and return to the states the ability to regulate fully the rates and services of the public utilities within their states and thus protect the public interest. We urge its quick enactment, changed as suggested.

Thank you very much, Mr. Chairman, for this opportunity to appear.

[The prepared statement of Mr. Scharlau follows:]

BEFORE THE SENATE SUBCOMMITTEE ON
ENERGY REGULATION AND CONSERVATION

TESTIMONY OF CHARLES E. SCHARLAU

S. 1717:

THE UNIFORM REGULATORY

JURISDICTION ACT OF 1987

JUNE 14, 1988

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WRITTEN TESTIMONY OF CHARLES E. SCHARLAU

On behalf of Associated Natural Gas Company, a Division of Arkansas Western Gas Company (the ANG Division), I would like to thank you for providing this opportunity to testify in support of S. 1717. Arkansas Western Gas Company has served natural gas in Northwest Arkansas since 1929. It has obtained its supply from gas fields in western Arkansas and sold it to customers now numbering approximately 80,000 in Arkansas. Effective June 1 of this year, it acquired by merger ANG and will operate it as a separate division called the ANG Division of Arkansas Western Gas Company. The facilities of the two companies are not interconnected. I am Chairman of the Board and Chief Executive Officer for both companies.

Although AWG is not itself a Section 7(f) company, its ANG Division is such a company. The ANG Division owns and operates eleven (11) isolated systems in the States of Arkansas and Missouri which together serve a total of 62,000 Arkansas and Missouri retail customers. One of the systems consist of a relatively small interstate transmission line which crosses the Arkansas-Missouri border and which is covered by a Section 7(f) service area determination. Despite its ownership of the interstate transmission line, all of the ANG Division's sales are retail sales (as opposed to sales for resale), and thus operates primarily as a local distribution company. The services rendered by the ANG Division are virtually indistinguishable from those

provided by local distribution companies located in a single state.

The interstate transmission line consists of approximately 44 miles of 10" pipeline running from near Blytheville, Arkansas to near Campbell, Missouri. It is a part of an integrated local distribution system consisting of 123 miles of 2", 6", and 8" line which serves 28,200 Arkansas and Missouri retail. Technically speaking, because that 10" line crosses the Arkansas-Missouri border, the ANG Division is considered a jurisdictional "natural-gas company" under the Natural Gas Act. Nonetheless, because retail sales are exempt from the FERC's NGA jurisdiction, all of the ANG Division's sales rates and services are regulated by the Arkansas Public Service Commission and the Missouri Public Service Commission. The ANG Division also provides intrastate transportation services (i.e., transportation which does not utilize the 10" interstate transmission line) to its industrial customers which is subject exclusively to regulation by the Missouri Public Service Commission. Additionally, the FERC recently issued the ANG Division an Order No. 63 blanket certificate authorizing the ANG Division's interstate transportation of gas.

The ANG Division strongly supports S. 1717 and urges the Congress to enact it into law as expeditiously as possible. Because there are only a handful of Section 7(f) companies existence, the problems faced by these companies, which for all practical purposes are local distribution companies have often

been overlooked by federal policymakers in promulgating statutes and regulations. I applaud the subcommittee's quick response to the problems currently faced by Section 7(f) companies which only recently became visible as the result of certain decisions of the FERC issued less than a year ago.

By way of background, Section 7(f) of the Natural Gas Act (NGA) authorizes the FERC to grant certain companies service area determinations within which the company may enlarge or extend its facilities without further authorization from the FERC. Companies eligible to receive Section 7(f) determinations are, as is the case for the ANG Division, essentially local distribution companies which own and operate facilities which happen to cross state lines. Such companies are engaged solely in retail rates and services, do not operate long-line transmission facilities, and are subject to regulation by the relevant state regulatory agencies in all states served. See, e.g., Iowa-Illinois Gas and Electric Company, 39 FERC ¶ 61,016 (1987). Because the facilities of such companies cross state lines, however, the FERC would in the absence of a Section 7(f) determination, assert its jurisdiction under Section 7(c) of the NGA to regulate the construction of such facilities, even though the services provided by such companies are otherwise virtually indistinguishable from other local distribution companies. Because the services rendered by such companies are exclusively at the retail level, the FERC has grahted such companies a Section 7(f) service area determination to remove what would

otherwise be an unnecessary and burdensome overlay of federal regulation. Thus, the grant of a Section 7(f) determination, at least until now, has permitted companies such as Washington Gas Light Company (WGL) and the ANG Division to operate like any other local distribution company subject only to state commission regulation.

So long as the Section 7(f) company functioned solely as a merchant selling gas at retail, the extent of the statutory exemption from FERC jurisdiction provided by Section 7(f) of the NGA worked reasonably well. The FERC, after determining that a company operated primarily as a local distribution company and was subject to state commission regulation, exercised its discretionary authority under Section 7(f) to remove itself from an area where it clearly wasn't needed and did not belong. With the recent advent of the spot sales market and open-access transportation, however, the FERC's ability to avoid becoming unnecessarily embroiled in the companies' intrastate services reached an end.

As the members of this subcommittee are no doubt aware, S. 1717 was introduced largely in response to the FERC's well-intentioned, but ill-fated, attempt to define and limit the extent of its jurisdiction over transportation by Section 7(f) companies to their retail customers. In its rehearing order in Washington Gas Light Company, 40 FERC ¶ 61,361 (1987), the FERC limited its jurisdiction over such transportation arrangements to the company's transportation through "high pressure" lines and

those "low pressure" lines used to deliver gas across state lines. In recognition of the statutory exemption from its jurisdiction of local distribution services and facilities, the FERC left WGL's transportation services through the remaining "low pressure" lines to the jurisdiction of the appropriate state commission.

As is so often the case, what is easy in concept can be difficult or impossible to apply in the real world. Where a company has clearly defined city-gates or serves just one or two distribution centers, the application of a high-pressure, low-pressure test may be possible. However, for companies such as the ANG Division which operate highly integrated systems of transmission and local distribution facilities, and serve a large number of often ill-defined distribution centers, distinguishing between high-pressure and low pressure lines is virtually an impossible task.

Beyond the unworkability of the FERC's jurisdictional test, however, are the more fundamental policy issues which are raised by the assertion of federal jurisdiction over the local distribution of gas. Section 7(f) companies have for years successfully provided adequate and reliable sales service to their retail customers across state lines under rates, terms and conditions subject exclusively to the jurisdiction of the relevant state commissions. The only distinction between sales service and transportation service to these retail customers is the entity which holds legal title to the gas being delivered.

Regardless of whether the service being provided is sales or transportation, the same retail customers are being served and the same local distribution facilities are being used. Additionally, both types of services raise cost allocation issues and require an examination of the impact of the service on the company's other retail sales customers.

Splitting jurisdiction on the arbitrary basis of which entity holds title to the gas makes little or no sense as a matter of policy and creates an inefficient overlay of federal regulation in an area where it clearly is not needed. More importantly, the FERC's unfortunate and, in light of the NGA's current provisions, perhaps unavoidable assertion of jurisdiction over a Section 7(f) company's retail transportation services deprives state commissions of their ability to adequately regulate the rates and services of local distribution companies under their jurisdiction. Ultimately, the unnecessary federal intrusion in these companies' retail operations may jeopardize the company's ability to continue to provide reliable service to its customers at the lowest reasonable cost.

Because the FERC does not have jurisdiction over a Section 7(f) company's retail sales, it is inadequately equipped to grapple with, much less comprehend, the potential ramifications of a gas utility's transportation service to one of its retail customers on the company's other utility operations. On the other hand, the relevant state commissions will have had long experience and an in-depth knowledge of the company's retail

sales services within their respective jurisdictions. Therefore, state commissions are in a far better position to ensure that the rates, terms and conditions of a particular retail service are in the best interests of the company's customers as a whole. Moreover, most state commissions sharing jurisdiction over the same Section 7(f) company have had a long history of successfully coordinating their regulation of such companies with respect to their retail sales. I expect that their coincident jurisdiction over a Section 7(f) company's transportation services would be handled in a similar fashion.

S. 1717 removes the uncertainties created by the FERC's MGL decision, and provides a clear statutory basis for the FERC to continue its implicit and long-held policy which remains as valid today as it was when it was first adopted - that a Section 7(f) company should be treated like all other local distribution companies whose rates and services are subject to the exclusive regulation of the relevant state commissions. Although the movement of gas through a Section 7(f) company's facilities may technically be in "interstate commerce", the essential fact remains that the retail transportation services of such companies are primarily local matters which should be left to the states.

When viewed from this perspective, S. 1717 is not without precedent, and is in fact nearly identical in purpose and effect to the Hinshaw Amendment which enacted Section 1(c) of the NGA. Section 1(c) exempts from the FERC's jurisdiction companies which receive gas within a state, if the gas is ultimately consumed

within such state and the company's rates, services and facilities are subject to regulation by a state commission. The Hinshaw Amendment was enacted in response to the Supreme Court's decision in FPC v. East Ohio Gas Company, 338 U.S. 464 (1950), which declared that, even though such companies were essentially intrastate in nature, they were as a technical matter engaged in the interstate transportation within the meaning of the NGA. Although the Court itself recognized that the results of its decision may not have been desirable as a matter of policy, it nonetheless felt, as the FERC apparently did in its WGL decision, that its hands were tied by the statutory provisions of the NGA. Thus, the Court essentially left the matter to Congress to be resolved which, to its lasting credit, it ultimately succeeded in doing.

Admittedly, the number of Section 7(f) companies is relatively small in number. However, when viewed from the perspective of the individual companies and their customers, the magnitude of the problems created by the WGL decision is certainly no less than those created by the Court's East Ohio decision for Hinshaw Companies, and the need for Congressional action equally critical. Until now, the provisions of the NGA have proven remarkably flexible, and have given federal regulators ample room to respond to the tremendous changes in the natural gas market which have occurred in the 50 years since the NGA's enactment. S. 1717 removes one of the few areas which have proven inadequate to meet the new challenges created by the

recent phenomenon of transportation services by intrastate companies.

Like the Hinshaw Amendment, S. 1717 will eliminate the confusion which now exists between federal and state regulatory jurisdiction, will restore a rational and more appropriate balance between the state and federal regulatory spheres, and will return to the states the ability to regulate fully the rates and services of public utilities within their respective states and thus protect the public interest.

Senator BUMPERS. Charles, that was an excellent statement and really I think very clearly and concisely states the problem in a very understandable way.

Mr. Maher.

STATEMENT OF PATRICK J. MAHER, PRESIDENT, WASHINGTON GAS LIGHT CO.

Mr. MAHER. Mr. Chairman, I want to thank you very much for this opportunity to present our views on S. 1717, and I also want to thank you for taking time out of your schedule to chair this meeting today. I would also as an aside say that this is one of the few times that I have heard my name pronounced correctly, and I appreciate that.

Senator BUMPERS. There are just a few of us born to rule. Don't you agree? [Laughter.]

Mr. MAHER. Let me give a little background on my company, the Washington Gas Light Company. We are the local distribution company here in the Washington metropolitan area. We serve about 2 million retail, commercial and industrial customers through some 600,000 meters. And all of our rates are set by the local jurisdictions, the local commissions in which we operate.

We are very happy to have this opportunity to discuss S. 1717 as suggested and modified by Dr. Johnston this morning. We are convinced it remedies an increasingly troublesome problem of the needless dual state and Federal regulation of a handful of local distribution companies, such as ourselves. The local transportation of natural gas by a distribution company with a multi-state jurisdiction is in our view properly under the purview of the state commissions, and the state commissions should have full regulatory authority and oversight over the rates and terms and conditions of that transportation. And in our view, the bill before you today accomplishes this and it accomplishes it with a very limited impact. As you know, only some eight companies are affected by it.

As you well know, the activities of the natural gas industry, whether producer, pipeline or distribution companies, have been treated for regulatory purposes as separate and distinct. However, in the case of 8 companies, as mentioned this morning, out of some 1,400 distribution companies, the industry pattern has been blurred by an inadvertent and I believe unintentional requirement of Federal law. In short, these eight companies, while they are undeniably subject to the state jurisdictions for their retail sales service, they are subject to partial regulation by the Federal Energy Regulatory Commission simply because of the fact that their systems transcend or go across state boundaries.

Let me give you the experience of my own company. We, the Washington Gas Light Company, over the years built a fully integrated distribution system network that ties into the interstate pipeline systems, and we tie in at city gate stations. We have city gate stations in Maryland and in Virginia. And the gas then flows into our distribution system network from those interstate pipelines.

Senator BUMPERS. Mr. Maher, I was not clear on that. Would you start again because I want to hear this illustration you're about to give.

Mr. MAHER. I would like to just give you an idea of our system and how our system developed and how it works. And I perhaps will throw in another analogy at the end to give you a concept of what it is like.

We built our distribution system to try to maximize the efficiencies of that system, and that system is tied into the interstate pipeline system at city gate stations. We have a city gate station in Maryland and a city gate station in Virginia. The gas then flows into our distribution network from that interstate pipeline system. And that distribution system network of necessity flows across jurisdictional lines, Maryland, Virginia and the District of Columbia. In fact, some of our lines go right down the center of streets which themselves form the border between the District of Columbia and Maryland.

I sort of visualize our distribution system network like a giant spider web with anchors, since all spider webs have anchors, anchors to the interstate pipeline system. And our system is, as I say, an integrated system. And it is simply because of the fact that that system crosses state lines that we are considered to be in the interstate transportation of natural gas even though that transportation itself is purely incidental and associated with our local distribution of natural gas.

We ourselves are a natural gas company. And an interstate pipeline, as defined by the 1938 act, not because of who we are or what we do, but simply because of happenstance, the fact that we built a network to maximize efficiencies, to minimize costs. And we built that system gradually as the metropolitan Washington area expanded.

We obtained a section 7(f) service determination area from the Federal Power Commission, the predecessor of the Federal Energy Regulatory Commission, and this gives us blanket authority to expand our facilities in our service area. But while the Commission's decision has meant that we could expand local service without further authorization from it under Federal law, the Federal Energy Regulatory Commission has retained jurisdiction over our transportation of natural gas.

I can present a good example to the committee. A couple of years ago a group of hospitals approached our company and asked us to transport gas for them, gas which they had contracted for from either a producer or a broker. And because of the anomaly, the uncertainty with respect to the regulatory oversight, we were unsure as to who had jurisdiction, whether it was the Public Service Commission of the District of Columbia or the FERC. And while we were negotiating with the representative of the hospitals and at the same time trying to determine who had jurisdiction, the hospitals filed suit against us.

And ultimately the matter was settled by us filing both with the Federal Energy Regulatory Commission and the Public Service Commission of the District of Columbia to see which jurisdiction had authority over us. Initially, the Federal Energy Regulatory Commission said they had total authority over us. Subsequently, as

a result of a rehearing, the Commission came up with a more narrow application of the jurisdiction. And frankly, they surfaced what I consider a very nightmarishly difficult concept, and that is the fact that the FERC would regulate the high pressure transmission lines and the low pressure systems within the state or the jurisdiction in which the gas would be consumed. Excuse me. they would regulate the high pressure transmission lines and the low pressure lines outside of the state in which the gas would be consumed. And they relegated to the local commission jurisdiction over the low pressure systems within the state in which the gas would be consumed.

Senator BUMPERS. Incidentally, was the hospital buying gas, from a producer?

Mr. MAHER. I don't know whether it was directly from a producer or a broker. I do not know the answer to that, Senator.

Senator BUMPERS. But in all probability, it was coming right out of the same pipeline that you buy interstate gas from.

Mr. MAHER. That is correct. It would have to come through our city gate stations.

The solution which the FERC came up with is really not a very tidy solution. Our company and all the other companies who are so involved would have to review their entire system network. We have thousands of miles of pipes and we would have to classify them both high pressure and low pressure transmission distribution, and those classifications are not precise.

We really don't know the answers to this, but I can tell you one thing. We certainly don't relish the thought of going through additional regulatory filings, hearings, rehearings and possibly court cases to arrive at a determination as to what in the end is really and truly only arbitrary. Regulatory proceedings such as these are really not helpful either to our company, our customers, or those people who want to transport gas on our own system.

We strongly support the legislation which you have before you. We are not seeking any special treatment. We only ask that you allow us to be treated as virtually every other domestic natural gas distribution company. The transportation service that we are talking about is entirely local in nature and is best regulated by the individual states. The issue here, at least in our particular view, is who should set the rates, not what those rates should be. I think the proposal that you have before you would, in effect, allow the commissions to have a total oversight and control over the distribution of natural gas within their jurisdiction.

I want to thank you very much, Mr. Chairman, for this opportunity to testify before you today. I appreciate it.

[The prepared statement of Mr. Maher follows:]

BEFORE THE SENATE SUBCOMMITTEE
ON ENERGY REGULATION AND CONSERVATION

TESTIMONY RE: S. 1717

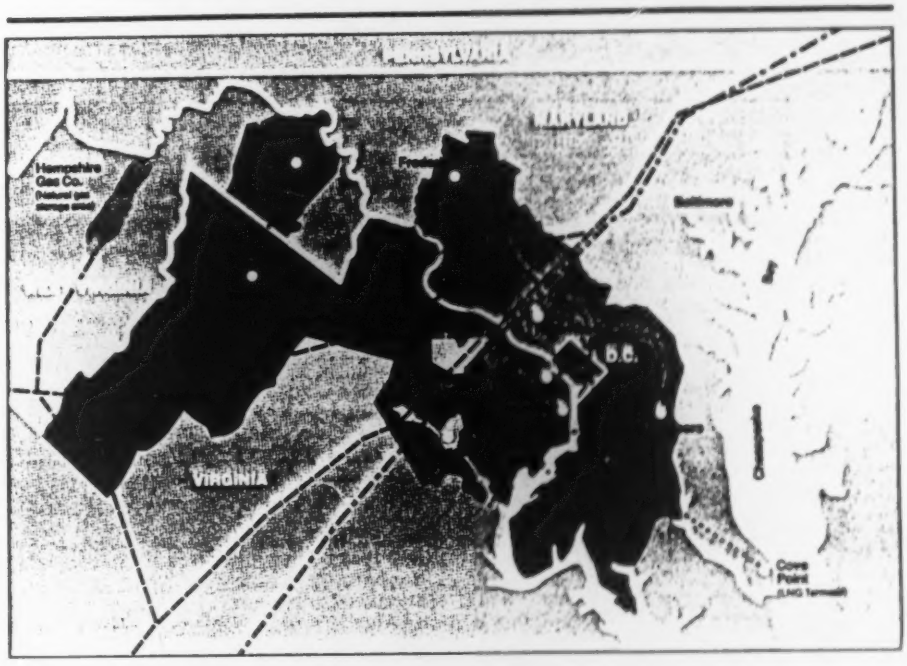
THE UNIFORM REGULATORY

JURISDICTION ACT OF 1987

JUNE 14, 1988

PATRICK J. MAHER
PRESIDENT
WASHINGTON GAS LIGHT COMPANY
1100 H STREET, N.W
WASHINGTON, DC 20080

The map below shows, in green, the service area of Washington Gas Light Company (WGL). WGL is a local distribution company (LDC) engaged in the provision of retail natural gas services. The heavy black lines represent the large, interstate pipelines that bring gas from the gulf coast and the southwest to WGL's city gate.



Currently, the states exercise jurisdiction over all WGL's sales of gas, but FERC feels compelled to exercise jurisdiction over part of WGL's transportation services. The purpose of S. 1717 is to clarify federal law so that the states retain jurisdiction over all local distribution services within the area shown in green.

EXECUTIVE SUMMARY

Description of Washington Gas Light Company (WGL)

WGL is engaged in the local distribution of natural gas. Its distribution system and service area cross state lines in serving customers in the District of Columbia, Maryland and Virginia. By the terms of the Natural Gas Act and the Natural Gas Policy Act, WGL is a natural gas company and an interstate pipeline, respectively, simply because it crosses state lines incidental to its distribution function. Although WGL's sales of gas are regulated exclusively by the respective state commissions, regulatory jurisdiction over its end-user transportation rates and services is split between FERC and the state commissions.

The Current Situation

When the Natural Gas Act was enacted in 1938 Congress sought to regulate the interstate pipelines by delegating its regulatory authority over rates to the Federal Power Commission. It also left to the states their ratemaking authority over the business of local distribution. LDC's purchased gas from pipelines, whose rates were set by the FPC (now the FERC), and in turn sold gas at retail to end-users at rates set by state public utility commissions. In the case of such sales by LDC's, that regulatory framework is still the law of the land and no change to that is proposed by S. 1717.

After NGPA was enacted and access to the wellhead was provided to LDC's and end-users so as to foster competition by permitting them to buy directly from producers and have the gas delivered (transported) by the pipelines, it became necessary for FERC and state commissions to also set rates for transportation of natural gas.

There are about 1400 LDC's in America. For nearly all of them, local transportation rates are set by the state commissions. For WGL and about seven others, the law is not clear and FERC feels compelled to set transportation rates over part, but not all, of our fully integrated, local distribution systems. S. 1717 would clarify the law so that the state would regulate transportation rates for WGL and its few counterparts, just as the states do for the other 1392 LDC's whose business is the same as that of WGL.

The reason for the federal regulatory intrusion is that WGL serves the Washington Metropolitan Area and that results in it having a multi-state presence. Its local distribution system crosses state lines and in the case of transportation, FERC feels that it is compelled to set WGL's transportation rates over certain parts of that local distribution system.

Impact of S. 1717

The enactment of this legislation would return to local control the regulation of all gas distribution services conducted within state borders. Thus, it would restore the status quo as

it pertains to regulatory jurisdiction which existed prior to the advent of end-user transportation.

Moreover, the legislation would eliminate the confusion that currently exists over which regulatory body, state or federal, has control over what lines and what pressures. The confusion is a direct result of a FERC order "clarifying" the extent of its jurisdiction over WGL's end-user transportation services. By eliminating that confusion, the amount of time and expense it currently takes to respond to two different regulatory bodies with different regulations, standards and rate designs would be avoided. Our customers would also be able to do business with more certainty, as would our marketing personnel.

Lastly, the bill does not effect any other entities in the natural gas industry other than the very small number of easily identified multi-state distribution companies. Only eight multi-jurisdictional distribution companies have received or are eligible to receive Section 7(f) certificates from FERC.

STATEMENT FOR THE RECORD

The Washington Gas Light Company (WGL) wishes to extend its sincere appreciation to Senator Metzenbaum for scheduling these hearings on S. 1717, the Uniform Regulatory Jurisdiction Act, and to Senator Bumpers who graciously agreed to chair these proceedings. This testimony will attempt to explain why WGL is seeking federal legislation to clarify the obvious, that is, that

a gas distribution company's end-user transportation is wholly a local matter subject to state, not federal, regulation. In providing this explanation, we will also be addressing the questions which were presented in the invitation to testify. Paraphrased, those questions were:

1. Whether WGL supports the legislation and, if so, our rationale for doing so;

2. The extent to which WGL's service is interstate in character and the extent to which it is akin to the type of service customarily provided by a local distribution company; and

3. Whether WGL is providing transportation service for third party transporters.

The Washington Gas Light Company joins its state commissions and their respective people's counsels in the District of Columbia, Maryland and Virginia in its strong support for the enactment of S. 1717. The need for this legislation has been made necessary by the recent changes in the gas industry.

When the Natural Gas Act (NGA) was enacted in 1938, its drafters could not have contemplated the present day configuration of the gas industry. At that time, the activities of the industry's three main components (producers, interstate pipelines and local distribution companies) were distinct and separate. This structure dictated the regulatory framework established by the NGA: the Federal Power Commission (now FERC) had regulatory jurisdiction over interstate transportation and wholesale rates and the state commissions were specifically

delegated the regulatory jurisdiction over retail sales rates. This meant that even for distribution companies with multi-state service areas, there was no duplicative regulation because of the specific delegation of retail sales regulation to the states.

There have been relatively few changes to the NGA since its enactment because the industry structure and each segment's activities upon which the regulatory framework was based have remained practically unchanged. In fact, between 1938 and 1983, virtually all interstate gas was wholesaled by interstate pipelines and then retailed locally by the local distribution companies. With the advent of end-user transportation, however, this once smoothly operating, logical regulatory framework is no longer working.

Now, simply by virtue of its multi-state presence, WGL's end-user transportation services provided over certain segments of its distribution network are partially regulated by FERC while its sales rates and services continue to be regulated by the respective state commissions within which it operates. This dual jurisdictional status is not only illogical, inefficient and duplicative but is a direct usurpation of states' rights to regulate the terms and conditions of transportation service being offered to customers within their respective states. By supporting this legislation, WGL is simply seeking the same treatment as virtually all other 1400 distribution companies across the nation: to have both its sales and transportation rates regulated by the appropriate State authority.

As explained above, this illogical situation in which WGL finds itself has developed as a result of both its growth pattern and the 1938 NGA which did not envision this situation. The Washington Gas Light Company (WGL) is a local gas distribution company serving over 2 million consumers in the Washington Metropolitan Area. Our three divisions, District of Columbia Natural Gas, Maryland Natural Gas, and Northern Virginia Natural Gas, serve the particular needs and circumstances of those residential and other consumers through more than 600,000 meters. WGL functions solely as a local distribution company, and its distribution operations are performed through a fully integrated distribution network. All sales are retail sales to residential, commercial and industrial end-users at rates which are regulated by the public service commission of each state. Its transportation is also clearly a retail transaction and local distribution. The Company moves gas within the Washington area; it moves none from production areas, the Southwest or the Gulf Coast, e.g. to Washington. The Company is <u>not</u> in the interstate pipeline business.

WGL is presently served by two interstate pipelines, the Columbia Gas Transmission Corporation and the Transcontinental Gas Pipe Line Corporation, pursuant to service agreements and authorized rates and tariff provisions. More recently, the pipelines also provide transportation service to WGL for gas purchased directly from producers. This gas is received at city-gate stations located near Rockville, Maryland, and Reston,

Virginia. The gas is then locally distributed by WGL through miles of mains that encircle as well as penetrate the various jurisdictions in the Washington Metropolitan Area. In doing so, those mains cross the state boundaries of Maryland, Virginia, and the District of Columbia.

Technically, therefore, WGL transports gas in interstate commerce even though said transportation is incidental to the local distribution of gas. More specifically, this simple act of crossing state lines, one which was dictated by geography, growth patterns, and systems efficiencies, has caused WGL to fall within the definition of "natural gas company" as it is defined in the Section 2(6) of the Natural Gas Act, and therefore subject to the jurisdiction of the Federal Power Commission (now FERC). The Natural Gas Policy Act further complicated this situation when, in Section 2(15), it defined "interstate pipeline" as a "natural gas company" subject to FERC jurisdiction.

However, FERC recognized that WGL's activities were local in natural by granting WGL a service area determination pursuant to Section 7(f) of the Natural Gas Act. The orders granting the Section 7(f) certificate specifically recognized that WGL's functions are solely those of a distribution company and that the terms and conditions by which it renders retail gas service are regulated by state commissions. This certificate allows WGL to enlarge and extend facilities within its designated service area in order to serve increased market demands without having to obtain individual Section 7(c) certificates from FERC each and

every time as interstate pipelines do. This Section 7(f) certificate reduced to a minimum FERC's day-to-day regulation of WGL, but not its jurisdiction over end-user transportation. Logically, any end-user transportation offered by WGL would be subject to State commission jurisdiction because the terms and conditions of that end-user transportation, like that of wholly intrastate distribution companies, would impact on WGL's retail consumers in that particular state.

However, WGL's multi-state presence led others to believe that FERC was the appropriate regulatory authority. One such person, an attorney for some of our hospital customers, brought a law suit against the Company asking the courts to provide for transportation. The suit was settled when all parties agreed that the Company would file for transportation authority with both the Public Service Commission of the District of Columbia and with the FERC and that the ultimate jurisdictional determination would be made by the appropriate authority.

Initially, FERC determined that it, not the state commissions, should regulate WGL's end-user transportation because some distribution mains cross state boundaries. four months later, on rehearing, FERC minimized its involvement in WGL's activities. In a clarifying order, Washington Gas Light Company, 40 FERC Paragraph 61,361 (1987), FERC restricted its jurisdiction to "transmission" or "high" pressure lines and those "low" pressure lines which cross state lines. The Public Service Commission of the District of Columbia had previously reached the

same conclusion. True, the states now have a say in regulating transportation, but confusion and dual jurisdiction remain.

To the extent that FERC regulates transportation rates but does not regulate sales rates, potential conflicts and uneven treatment of customers within each state may result. In many cases, service lines from a dwelling, or a "Mom and Pop" store to the distribution main in the street cross state lines (one side of the street is Maryland and the other is the District of Columbia); or the distribution main itself crosses back and forth. We believe that logic alone impels the conclusion that the states should handle rates and service for these and all other distribution activities.

Under Order 436 and the Order 500 series, the Commission made it clear that when transported gas reached the city-gate, the responsibility for the rates, terms and conditions of the transportation of customer-owned gas should appropriately shift to the state agency which has jurisdiction. The Commission recognized that if it were involved in local transportation by local distribution companies it would be in direct conflict with the responsible state authorities. Moreover, the Commission recognized that if it were to become involved in the regulation of transportation by a distribution company, it would need to resolve questions of cost allocation of rates for various classes of customers, matters over which it lacked jurisdiction. Thus, as noted previously, FERC does not regulate 1392 of the 1400 LDC's.

In addition, while it is true that each state regulatory agency would retain some control because of its partial jurisdiction, the state still lacks the authority to compel WGL to offer transportation service. And, since FERC does not have compulsory jurisdiction, the state cannot even request that FERC order the Company to provide service. As a result, the state public service commissions, as noted by them in correspondence to the Senate, are frustrated in their efforts to establish statewide policy and practice. Each has established transportation policy, but each is obliged to treat WGL differently and to wait for the resolution of jurisdictional questions.

In an effort to cooperate with all the jurisdictions, the Company has obtained federal authority to transport in Virginia, Maryland, and the District of Columbia and has an application pending for West Virginia. We have Public Service Commission approved tariffs for the state portion in Maryland, the District of Columbia, and West Virginia and an application has been filed in Virginia. We have had agreements with customers but through April of this year they utilized our sales gas because spot market prices were higher than pipeline supplies last winter. Customers entering into contracts with us in the early spring continued to favor sales gas because of our favorable cost of gas. However, as that reverses itself, customers will want transportation and will have to go to two regulatory bodies if their position differs from the Company. We believe that our

customers, and the Company too, can expect more prompt resolution of differences at the local level. In fairness to the FERC, with all it has on its agenda it hardly has the time or experience to set rates for retail customers in Maryland, the District of Columbia, and Virginia. Moreover, states have set local rates throughout the history of regulation, predating the NGA by 25 years, and are clearly better suited to the task.

As mentioned above, WGL is not alone in recognizing the need for and requesting the passage of S. 1717. Each of our state commissions in the District of Columbia, Maryland and Virginia wholeheartedly support our efforts to rectify this situation. The people's counsel in Maryland and the District of Columbia have endorsed our efforts, too. The National Association of Regulatory Utility Commissioners has also lined up behind the bill by unanimous resolution in support of this legislation and urging its enactment by Congress.

In sum, the regulatory jurisdictional status of WGL had not posed significant operations or administrative problems until the institution of end-user transportation. This type of transportation was clearly unanticipated at the time the Natural Gas Act was drafted fifty years ago. S. 1717 simply restores the delicate balance between state and federal regulatory authority which had been so carefully crafted under the NGA. As was the case with the Hinshaw Amendment, this fine-tuning of the Act reflects the changing circumstances of the gas industry.

Senator BUMPERS. Thank you, Mr. Maher.

Let me ask you this question. If this bill had been in place in the hospital case you mentioned a moment ago, is it your belief that FERC would not have had jurisdiction?

Mr. MAHER. If this bill, as proposed, would be in effect, our belief is that FERC would not have jurisdiction and the whole issue would have been resolved a lot more expeditiously.

Senator BUMPERS. If this bill passes—and incidentally, this is quite different from what we are used to hearing. This is an electrical case, but in the Middle South case we always accused Middle South of hurrying to get FERC jurisdiction. And here we have something different in that the gas transmission companies are actually opting for state regulation.

But let me ask you. Do you see any possibility, if the bill passes, of other LDCs trying to, say, reorganize their business in such a way that they would become eligible as a 7(f) company with the benefits of being a 7(f) company pursuant to the enactment of this bill? Would it be enough to cause other companies to want to somehow or other get under the same kind of jurisdiction?

Mr. MAHER. I would suspect, Mr. Chairman, that the vast majority of those other companies, the 1,392 companies, in effect have the ability to transport gas themselves with just state regulatory authority. I don't see any rush to try to come under.

Senator BUMPERS. Charles, do you want to comment on that?

Mr. SCHARLAU. Yes, Senator, I would. There's a possibility a company like the other part of ours, Arkansas Western or Northwest Arkansas, would look at the possibility of extending the service to maybe some communities over on the Missouri line and the Oklahoma line that are very small that don't have gas service, that we would not do it because we wanted to avoid FERC jurisdiction. We will probably take a look at seeing whether economically——

Senator BUMPERS. If this bill passes, you would take a second look at those then.

Mr. SCHARLAU. Yes, sir, we would. And there may be some other companies bordering a state line that are in the same situation.

Senator BUMPERS. That's fine with me. You know how I feel about FERC. [Laughter.]

Mr. Maher, have the costs of transportation of customer-owned gas gone up, down, or stayed about the same since FERC allowed state commissions to examine the rates for transportation through low pressure lines?

Mr. MAHER. I can't answer for most of the companies in the country, but I would say in general our costs have come down, our charges have come down. And I would like to give you an example.

We have offered the hospitals a rate which is less than the rates which their witness testified to in one of our cases. And yet, despite that offer, because of our efficiency in buying gas, they have opted to take sales gas instead of transportation because we can buy gas more economically than they can.

Senator BUMPERS. Since we sort of forced some of the transportation companies to start carrying gas for end use producers, how widely is that used now? Is it becoming a problem for LDCs? Let me restate the question.

When we first started talking about contract carriage, one of the arguments always used about the LDCs was that they have certain fixed costs. They've got a pipeline. They've got employees and so on. And their argument always was if you allow the chemical companies, for example, who are big end users to buy from producers and, say, require Texas Eastern to transport gas, then require you to transport gas to them, that the cost to the residential rate payers and the small commercial users would rise. How has that been working out in practice?

Mr. MAHER. Well, I really don't know the situation outside of our company. I'm not that familiar with it.

Senator BUMPERS. This is not totally related to what we're here talking about today.

Mr. MAHER. We don't have a comment on that. And two points. We don't have very large customers. Our largest customer uses less than 1 percent of our total supply.

Senator BUMPERS. Really?

Mr. MAHER. In fact, our largest industrial customer is probably close to one-half of 1 percent of our annual throughput.

Senator BUMPERS. This really is a service area, isn't it?

Mr. MAHER. It certainly is. And our major jurisdictions, both of the commissions in Maryland and Virginia, have come out with policy statements to say that the various types of services that we offer should be offered on a cost of service basis.

Senator BUMPERS. Charles, could you answer that question? What is your percentage of big end use users?

Mr. SCHARLAU. Very, very small. The University at Fayetteville is our largest user and they use it primarily for the same reason we do at home.

Senator BUMPERS. Who's your biggest industrial user?

Mr. SCHARLAU. The brick plant at Clarksville.

Senator BUMPERS. So, you haven't been bothered with this either.

Mr. SCHARLAU. Of course, we buy all of our gas for Western Arkansas right at the wellhead, and we have our own take or pay problems. I think perhaps the answer to your question is we don't know yet because FERC has not resolved the take or pay issue, and it depends on where those go and who has to bear those. Are they shifted to the other customer?

Senator BUMPERS. Do either of you gentlemen have any suggested changes in this bill? Any statutory changes or changes in the language?

Mr. SCHARLAU. My suggestion, Senator, was to change the language similar to the House bill.

Senator BUMPERS. That's right. You said that.

Mr. SCHARLAU. Yes.

Senator BUMPERS. Well, this bill will I assume go on the markup calendar very shortly, and I wouldn't anticipate that we will have any difficulty getting it out.

I want to, before we adjourn, to insert in the record a statement of Senator Nickles, a statement of the Virginia Corporation Commission, a statement of the Interstate Power Company, and Iowa-Illinois Gas and Electric Company.

[The prepared statements of Senator Nickles, Virginia State Corporation Commission, Interstate Power Co., Maryland Public Service Commission, and Iowa-Illinois Gas & Electric Co. follow:]

90-453 O - 88 - 3

Nickles

SUBCOMMITTEE ON ENERGY REGULATION AND CONSERVATION
HEARING ON S. 1717

Mr. Chairman, I am pleased that this hearing is being held to receive testimony on the merits of S. 1717, the Uniform Regulatory Jurisdiction Act of 1987. There are about 14,000 Oklahoman consumers that will be affected by this bill. One of the eight local distribution companies that hold service area designations pursuant to section 7(f) of the NGA is the Arkansas Oklahoma Gas Corporation, serving four Oklahoma counties across the state line from Ft. Smith, Arkansas. As the Chairman [Senator Dale Bumpers] is aware, the Arkansas Oklahoma Gas Corporation supports this bill.

The Public Utilities Division of the Oklahoma Corporation Commission has also advised me of their general support for the bill. I am looking forward to the testimony of today's witnesses regarding the need for and effects of this legislation. I am particularly interested in how this measure will affect open access transportation requirements for these multi-state local distribution companies.

I am informed that the House passed an amended version of this bill, H.R. 2884, on the consent calendar yesterday, along with a companion bill dealing with different anomolies in natural gas regulation that are found in section 315 of the NGPA. This measure, H.R. 2701, would change the 15 year contract duration rules for offshore gas and remove the right of first refusal for pipelines for certain categories of new gas. Taking note of the importance that the House placed on acting on these two bills as a package during both committee and House Floor consideration, and in the interest in cleaning up anomolous treatment under natural gas regulation for more than a single sector of the industry, I would expect that when the committee consider S. 1717, it will also consider the provisions of H.R. 2701.

COMMONWEALTH OF VIRGINIA

PRESTON C. SHANNON
CHAIRMAN
THOMAS P. HARWOOD, JR.
COMMISSIONER
ELIZABETH B. LACY
COMMISSIONER

GEORGE W. BRYANT, JR.
CLERK OF THE COMMISSION
BOX 1197
RICHMOND, VIRGINIA 23209

STATE CORPORATION COMMISSION

June 1, 1988

The Honorable Howard M. Metzenbaum, Chairman
Senate Committee on Energy Regulation and Conservation
140 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Metzenbaum:

On June 14, 1988, your Subcommittee will take testimony on S.1717 regarding the transportation of customer-owned natural gas by certain local distribution companies. Because of a scheduling conflict, I will be unable to be in Washington that day to present testimony your Subcommittee; however, if appropriate, I would like to have the enclosed testimony entered into the record of the Subcommittee's hearing.

As a result of initiatives undertaken by the Federal Energy Regulatory Commission, the transportation of customer-owned natural gas has become a new and separate service from the sale of gas by natural gas companies. Washington Gas Light Company (WGL), a fully-integrated local distribution company, provides retail transportation and sales service in parts of Virginia as well as Maryland and the District of Columbia. Without the enactment of the principals contained in S.1717, the regulatory jurisdiction over retail transportation of gas by WGL and other similarly situated local distribution companies will be subject to federal rather than state regulation. This will disadvantage both the utility and its customers. We believe this is an unintended result of the Natural Gas Act as well as the FERC initiatives. The Virginia Commission supports S.1717 and urges its enactment.

With kindest regards, I am

Sincerely,

Elizabeth B. Lacy
Commissioner

EBL:jsl
Enclosure

SUMMARY OF TESTIMONY OF
COMMISSIONER ELIZABETH B. LACY
BEFORE THE SUBCOMMITTEE
ON ENERGY REGULATION AND CONSERVATION
OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

The Washington Gas Light Company (WGL) operates as a fully integrated local distribution company (LDC) providing service to the District of Columbia and certain counties in Maryland and Virginia. While the Natural Gas Act (NGA) gives these states the authority to regulate WGL's retail gas sales, the Federal Energy Regulatory Commission (FERC) has determined that under the NGA transportation of customer-owned gas across state lines and through "high pressure" mains does not constitute local distribution. Accordingly, such transportation is subject to federal as opposed to state regulation. All other transportation of customer-owned gas, i.e., through low pressure distribution mains, is subject to state regulation.

S. 1717 advances the original concept of the NGA -- state regulation over local gas distribution company retail services. The Virginia Commission supports this concept and offers the following comments.

-- The only difference between retail sales service and the LDC transportation of customer-owned gas is that when providing sales the LDC owns the gas whereas with transportation, the end user is the owner. Gas ownership should not dictate regulatory jurisdiction.

-- The NGA could not have envisioned today's gas industry as driven by the Natural Gas Policy Act of 1978 and a series of FERC orders. Literal application of NGA provisions to the WGL situation results in an inappropriate regulatory structure and as a result, federal legislation should be revisited.

-- Bifurcating the regulation of WGL's transportation service could result in like customers of the same LDC in Virginia being subject to different rates and different regulatory philosophies.

The Virginia Commission supports S. 1717 and urges its enactment.

TESTIMONY OF
COMMISSIONER ELIZABETH B. LACY
BEFORE THE SUBCOMMITTEE
ON ENERGY REGULATION AND CONSERVATION
OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

June 14, 1988

I appreciate the invitation to appear before you today to present the Virginia State Corporation Commission's comments on S. 1717. This is not a complicated piece of legislation. Its significance, other than perhaps setting a new standard in Congressional brevity, lies in the reason its passage is needed.

As you know, the actions of the Federal Energy Regulatory Commission (FERC) in the last few years have caused a virtual upheaval in the operation and structure of the natural gas industry. Orders 380, 436, 451, 500 and its alphabet family, have changed most, if not all, of the real or perceived rules of the game. The natural gas "game" itself has the potential of becoming more efficient and financially attractive to consumers, shareholders, companies, Wall Street and the regulatory community. All of this has been accomplished without legislative initiatives, with the exception of the repeal of the Fuel Use Act last year by this body.

Good legislation is characterized by allowing response to changing times within its framework without the need for constant legislative fine tuning. The Natural Gas Act has served this end well, even in these times of radical change. Full implementation of the FERC generated initiatives in the

natural gas area can basically be accomplished without further legislation; S. 1717 addresses the exception which proves the rule.

S. 1717 applies to only eight natural gas distribution companies out of the 1,400 which operates nationwide. The interest of Virginia in S. 1717 is that one of those eight, Washington Gas Light Company, is fully regulated or was fully regulated on the state level until May 1987. The anomaly which has arisen from the FERC initiatives and the language in the Natural Gas Act for these six companies, including Washington Gas Light, cannot be corrected without legislation and deserves the attention of this Committee and Congress.

Washington Gas Light Company is essentially a local distribution company that provides retail gas service in the District of Columbia and in adjacent counties in the states of Maryland and Virginia. The company operates as a single integrated system; however, the movement of gas through the system constitutes interstate commerce. Therefore, even though WGL is technically a natural gas company within the meaning of the Natural Gas Act because of its "interstate" service area, from 1938 until the present, there was no difficulty because the service of the company was the retail sale of gas. The Natural Gas Act clearly limits the FERC jurisdiction to the wholesale

sale of natural gas and leaves retail sales to regulation by the states.

The initiatives of FERC have identified transportation of natural gas as a service separate and apart from the sale of natural gas to customers. In short, because the NGA only reserved the retail sale of gas to state jurisdiction, the FERC, in May 1987, declared that the transportation service of WGL was subject to the FERC jurisdiction, not that of the state public service commissions. In that ruling, FERC indicated that in its opinion it has no discretion under the terms of the Natural Gas Act due to the use of the words "interstate transportation," even though the transportation service may be local in scope.

The sale of natural gas entails the procurement of gas by the LDC and the distribution of that gas to ultimate end users. Transportation service, on the other hand, involves the distribution of customer-owned gas. The essential difference between sales service and transportation service is that the LDC buys sales gas, whereas the end users buys transportation gas. The distribution function of the LDC is identical in both instances. In fact, transportation gas and sales gas commingle throughout the company's distribution system. Regulatory jurisdiction should not be driven by the LDC versus the customer ownership of gas.

The Natural Gas Act could not have possibly envisioned gas transportation as we know it today. Applying literally the transportation provisions of the NGA to today's natural gas environment is indeed analogous to forcing a square peg into a round role. It is not only appropriate but absolutely critical for these eight LDCs that the NGA be revisited to reflect the reality of today's natural gas world.

The FERC recognized the problem when it issued a subsequent opinion in the WGL case in September 1987. In this opinion, the FERC attempted to reconcile the clear local nature of the transportation functions of WGL with the language in the Natural Gas Act. FERC's approach has that agency regulating the transportation of interstate gas through Washington Gas Light's high pressure lines, as well as the transportation of such gas through the company's low pressure facilities that cross state boundaries. All other transportation would then be regulated by the affected state PUCs, Virginia, Maryland, and the District of Columbia. This bifurcated regulation of WGL's retail transportation service is illogical and impractical; but most importantly, is not in the public interest. While applauding the FERC's efforts to recognize the true local nature of WGL's service in Virginia, the distinction between high and low pressure as a basis for jurisdiction is nebulous at best. Cost allocation scenarios may be unnecessarily complicated; it is our

understanding that the existence of a high pressure or a low pressure pipe in an amount determined by the FERC has little relationship to the inter- or intrastate (local) nature of this transportation service being provided.

The Virginia Commission believes that the provision of retail transportation by local distributors is a necessary response to the now competitive and dynamic gas industry. We further believe that cost-based transportation rates must be the corner-stone of an effective natural gas transportation policy. Such a policy, if properly implemented, can result in lower retail rates, keep LDCs competitive with alternate fuels and spawn economic growth and development. These are all high priorities in Virginia and we have acted to make cost-based transportation a reality through generic and company-specific proceedings.

We are continually frustrated, however, with our inability to make the benefits of transportation available to Washington Gas Light and its consumers in Northern Virginia. Since we have transportation jurisdiction over a limited portion of the company's Virginia system, it is impossible for our Commission to regulate WGL in a responsible fashion. Our frustration is compounded by the fact that the FERC does not have compulsory jurisdiction over WGL's transportation rates and services. Moreover, our quasi-jurisdiction over WGL's

transportation could result in like customers in the company's Virginia service area being subject to different transportation rates and perhaps different regulatory philosophies as well. We submit that this is inappropriate and contrary to the public interest.

As I have indicated, the public interest is best served by state regulation of all retail services, including transportation, notwithstanding the multi-jurisdictional nature of a very small number of LDCs. Consequently, the Virginia State Corporation Commission urges you to return to the state complete regulatory authority of retail gas service.

I appreciate this opportunity to share with you our views on this very crucial issue.

STATEMENT FOR THE RECORD IN SUPPORT OF S1717

SUBCOMMITTEE ON ENERGY REGULATION AND CONSERVATION

SENATE ENERGY & NATURAL RESOURCES COMMITTEE

BY D.H. BUSWELL, CHAIRMAN OF THE BOARD OF DIRECTORS

AND W.H. STOPPELMOOR, PRESIDENT AND CEO OF INTERSTATE POWER COMPANY

June 14, 1988

Interstate Power Company (IPW) takes this opportunity to present its views on S1717, the "Uniform Regulatory Jurisdiction Act of 1987". This bill would eliminate duplicative regulatory jurisdiction (Federal Energy Regulatory Commission (FERC) and state Public Utility Commission(s)) and the associated costs as well as enable us to better serve our large-use gas customers.

IPW is by definition under the Natural Gas Act (NGA) a jurisdictional "Natural Gas Company" by virtue of its transportation of natural gas from a point of purchase near Hooppole, Illinois from Natural Gas Pipeline Company of America to our gas distribution system in and around Clinton, Iowa. This pipeline, which is approximately 27 miles long, crosses the Mississippi River at Clinton. Similarly, IPW transports gas from point of purchase in Iowa from Northern Natural Gas Company across the Mississippi River (about one mile) to its natural gas distribution system in and around Savanna, Illinois. That transportation from one state to another is the issue this legislation addresses. For clarification, a map of the location of the lines discussed is attached.

Since all of IPW's sales of gas are at retail and are regulated by state commissions, it is also a "Local Distribution Company." The facilities to be used for transportation-only of gas are the same facilities as are used for the transportation and sale at retail of gas. All of those facilities are incorporated in the allocation of investments and operating costs for the rate making function of the state commissions for either sales at retail or for transportation-only.

Historically, IPW did not provide nor was it asked to provide transportation-only of gas for its retail customers. Now, however, due to

changing market conditions, IPW has been asked to and is currently transporting gas in that manner. Temporary authority has been granted us under section 7(c) of the NGA.

The problems in the existing dual regulatory scheme are that of trying to meet the needs of those retail customers with the complexity of the overlapping of two jurisdictions - Federal and State. Bottlenecks arise in the form of delay in obtaining multiple regulatory approval of the same issue - be it, as example, an investment allocation, a change in rate level due to changes in revenue requirements resulting from changes in income tax laws, or a change in physical plant required.

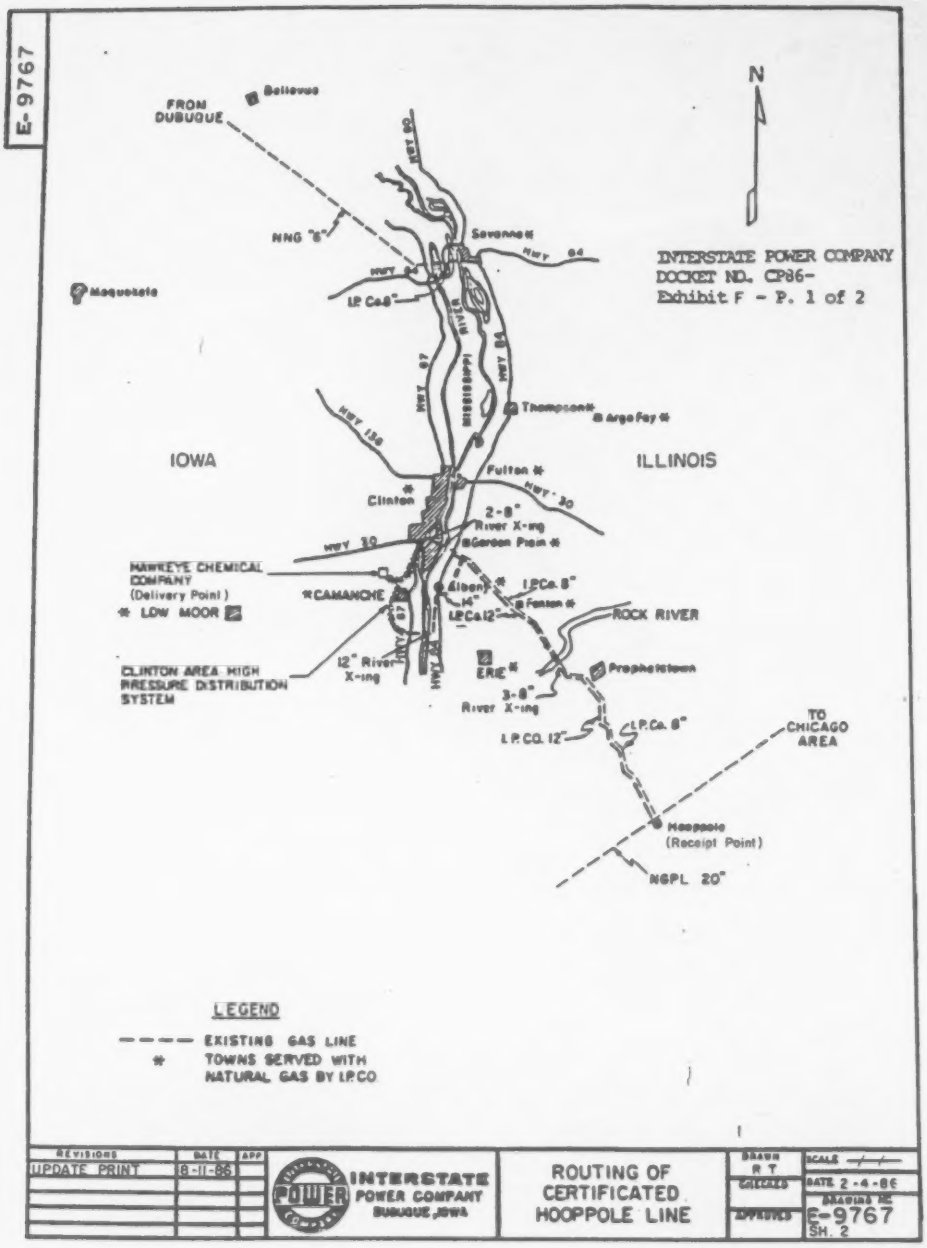
In addition to the delay of approval problem (which our customers always find unacceptable and not in keeping with their needs for timely decision making in the industrial world) we find inconsistencies in rate making procedures which make no sense when it is one local distribution company using one local distribution system serving the same retail customer for, in some cases, both transportation-only and retail sale of gas, or in serving two like customers - one for retail sale and the other for transportation-only of gas. It would be preferable to have the state commission that is responsible for the regulation of the retail sales be also responsible for the transportation-only of gas for the same or similar customer under these conditions.

S1717, would permit utilities for which the FERC has granted a Sec. 7(f) designation under the Natural Gas Act, to be subject to State commission regulation of rates for transporting gas even though the gas crosses State

lines. Furthermore, the only jurisdiction FERC would relinquish to a state commission would be for transportation-only in very limited situations.

Section 2(2) of S1717 would exempt IPW from FERC's jurisdiction for the transportation of gas. To avoid duplicative jurisdiction on the construction of additions to or replacements of existing FERC certificated facilities, we have not applied for a 7(f) determination and therefore urge the adoption of this legislation. To our knowledge, no opposition to this bill has been expressed to date.

We appreciate the opportunity to present these comments in support of S1717.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IOWA
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Clinton
Hwy 30
2-8" River X-ing
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Gordon Plain
HAWKEYE CHEMICAL COMPANY (Delivery Point)
LOW MOOR
CAMANCHE
Albany
LP Co. 8"
LP Co 12"
Fenton
ROCK RIVER
CLINTON AREA HIGH PRESSURE DISTRIBUTION SYSTEM
12" River X-ing
ERIE
Prophetstown
3-8" River X-ing
LP CO. 12"
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TO CHICAGO AREA
Hooppole (Receipt Point)
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INTERSTATE POWER COMPANY
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Exhibit F - P. 1 of 2
LEGEND
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DRAWN R T
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APPROVED
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DATE 2-4-86
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COMMISSIONERS
FRANK O. HEINTZ
CHAIRMAN
WILLIAM A. BADGER
LILO K. SCHIFTER
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STATE OF MARYLAND

PUBLIC SERVICE COMMISSION

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BRYAN G. MOORHOUSE
GENERAL COUNSEL
RONALD E. HAWKINS
EXECUTIVE SECRETARY
KENNETH G. HURWITZ
EXECUTIVE DIRECTOR

May 24, 1988

The Honorable Bennett J. Johnston
Chairman
Senate Committee on Energy and
Natural Resources
SD-358 - U.S. Senate
Washington, D.C. 20510

Dear Chairman Johnston:

The Maryland Public Service Commission urges the Congress to enact legislation to clarify that states have regulatory jurisdiction over the transportation rates and services of local gas distribution utilities such as the Washington Gas Light Company ("WGL").

By way of background, WGL is in all respects a local utility engaged in the local sale and transportation of natural gas. However, because WGL's multi-state distribution system serves the Washington Metropolitan Area, it is technically a natural gas company within the meaning of the Natural Gas Act ("NGA"). From 1938 until the present, this caused no difficulty because the NGA is clear that, where gas is purchased for resale, the distribution company is subject to state regulation. However, now that gas transportation services are being provided by local utilities, ambiguity in the NGA gives rise to jurisdictional questions for the handful of utilities whose local systems serve abutting states.

The Federal Energy Regulatory Commission has attempted to resolve this issue by written orders. However, due to the language of the NGA the matter of federal and state regulatory jurisdiction has not been satisfactorily resolved by the orders. Therefore, the enactment of amendments to the NGA is necessary.

S. 1717 has been introduced to resolve the jurisdictional issue. We urge your subcommittee's favorable consideration of legislation to place within state regulatory jurisdiction the local transportation of natural gas by Washington Gas Light Company.

Sincerely,

Frank O. Heintz

Frank O. Heintz
Chairman

kab

IOWA-ILLINOIS GAS AND ELECTRIC COMPANY

DAVENPORT, IOWA

FOR THE RECORD OF THE SENATE SUBCOMMITTEE
ON ENERGY REGULATION AND CONSERVATION

TESTIMONY IN SUPPORT OF S. 1717

JUNE 14, 1988

STEPHEN E. HOLLONBECK
MANAGER, GAS SUPPLY AND
SYSTEM DESIGN DEPARTMENT

POST OFFICE BOX 4350, 206 EAST SECOND STREET, DAVENPORT, IOWA 52808

STATEMENT OF STEPHEN E. HOLLONBECK

MANAGER, GAS SUPPLY AND SYSTEM DESIGN DEPARTMENT
IOWA-ILLINOIS GAS AND ELECTRIC COMPANY

Iowa-Illinois Gas and Electric Company (Iowa-Illinois) provides retail electric and natural gas service to residential, commercial, and industrial customers in the cities of Fort Dodge, Ottumwa, Cedar Rapids, and Iowa City, Iowa and in the Iowa and Illinois Quad Cities, consisting of Davenport and Bettendorf, Iowa and Rock Island and Moline, Illinois. A map showing the general areas served by us is attached to this Statement.

Iowa-Illinois is a local distribution company which makes no gas sales for resale and has no wholesale gas customers. Our rates, services and facilities in the state of Illinois are fully regulated by the Illinois Commerce Commission. Our rates, services and facilities in Iowa are fully regulated by the Iowa State Utilities Board.

Approximately twenty-five years ago, the requirements of our customers in the Iowa Quad Cities had grown to the point where it became necessary to provide another source of gas. It was determined that the most economical way to serve our customers was to connect our distribution system in the Illinois Quad Cities with our distribution system in the Iowa Quad Cities. This connection was accomplished by a single, 10

inch diameter pipe crossing the Mississippi River, the boundary between Illinois and Iowa.

Under a strict reading of the Natural Gas Act, that single piece of pipe made us a natural gas company subject to FERC regulation. However, that piece of pipe is also subject to state regulation because it is an integral part of our distribution system.

Prior to 1986, this duplicate regulation by FERC and the states did not pose a particular problem. However, in 1986, in response to our customers' needs, we began transporting gas purchased by our customers from sources other than ourselves. Both the state regulators and FERC have claimed jurisdiction over the rates for transporting this customer-owned gas to the extent the gas flows through the pipe which crosses the Mississippi River.

It is not our intent to be critical of FERC; in fact, FERC was very helpful in assisting us to obtain their authorization to transport customer-owned natural gas. But, the duplicate regulation over transportation of customer-owned gas is simply not necessary and imposes additional costs upon our customers. We are not asking to be deregulated; we are simply asking to be relieved of unnecessary duplicate regulation. The state regulatory agencies have the authority and capability to regulate the transportation service which we are providing to

our retail customers. Neither state regulatory agency opposes S. 1717, and, in fact, the Iowa State Utilities Board and the Iowa Office of the Consumer Advocate have written letters in support of the bill.

The passage of S. 1717 would not result in Iowa-Illinois or its facilities escaping regulation. The only result would be the removal of a second, duplicative layer of regulation. Our rates for transportation of customer-owned gas and for other services would continue to be fully regulated by the state agencies. The piece of pipe crossing the Mississippi River would even continue to be subject to FERC regulation for matters such as safety.

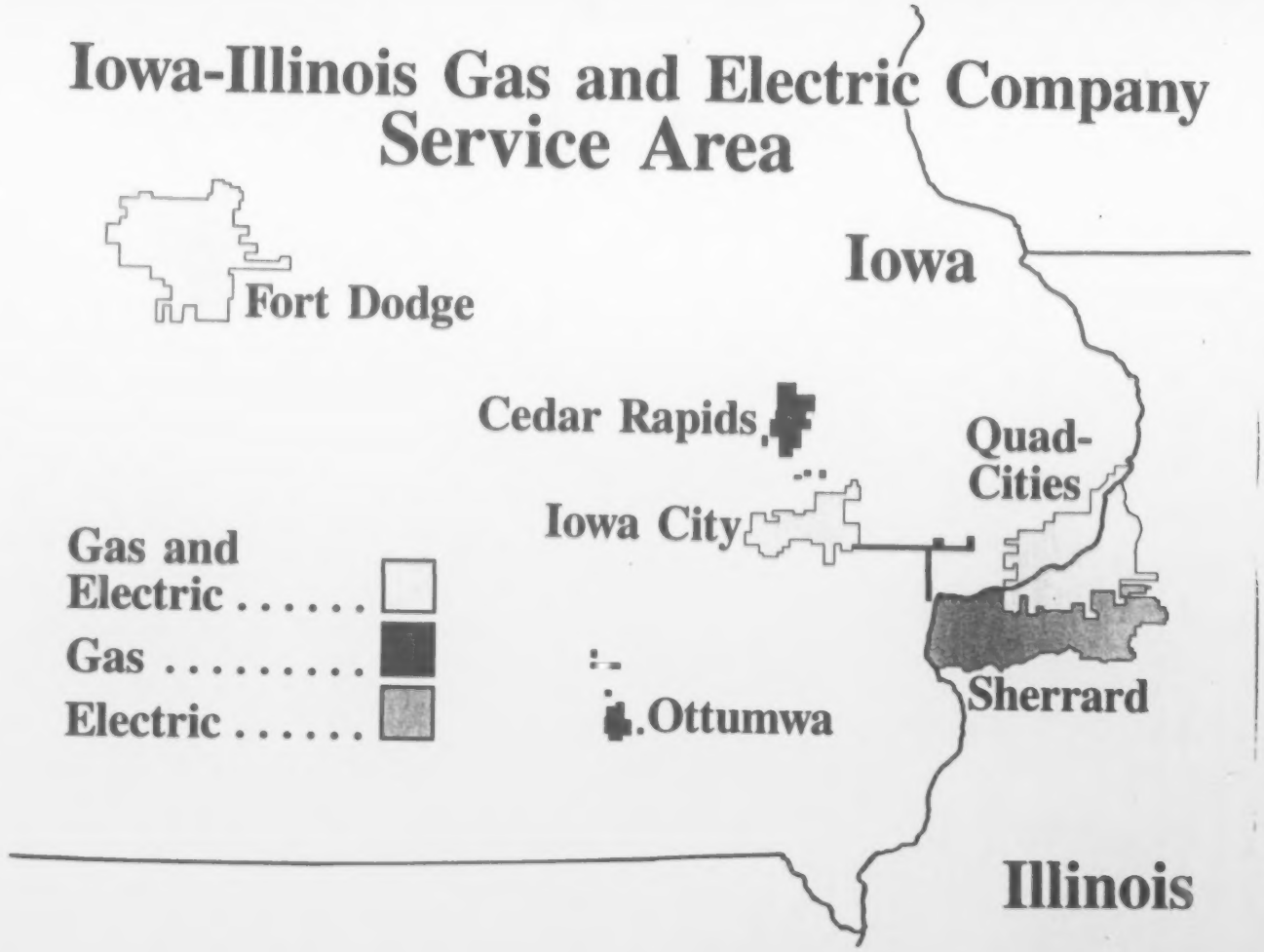
S. 1717 does not affect our exposure to bypass. If economically feasible, a pipeline could still bypass us and directly serve our industrial customers, with or without the passage of S. 1717.

We are dedicated to competing in the new competitive gas marketplace. To do so effectively, however, we must be relieved of the duplicate regulation with which other local distribution companies are not burdened. We cannot provide the services desired by our customers if we are hampered by the cost and delays of complying with dual regulation and the possibility of conflicting requirements. At least insofar as the transportation of gas is concerned, we should be treated

as the state-regulated local distribution company we are, instead of a regulated pipeline that the geographical happenstance of the Mississippi River has caused us to become.

Stephen E. Hollonbeck

Iowa-Illinois Gas and Electric Company
Service Area



Senator BUMPERS. And we will probably submit questions to you gentlemen for the record in addition to the ones that have been asked here.

Thank you both for excellent statements.

We will now adjourn.

[Whereupon, at 10:31 a.m., the hearing was adjourned.]

90-453 (120)

APPENDIX

RESPONSES TO ADDITIONAL QUESTIONS

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D. C. 20426

CHAIRMAN

July 8, 1988

Dear Chairman Metzenbaum:

Thank you for your letter of June 27, 1988, concerning S.1717 and its companion bill, H.R. 2884, providing in part for state jurisdiction over the transportation of natural gas by companies holding a service area designation under section 7(f) of the Natural Gas Act. Pursuant to your request, enclosed are answers to the questions forwarded with your letter.

I appreciate your inquiry. If I can be of any further assistance in this matter, please do not hesitate to contact me.

Sincerely,

Martha O. Hesse

Enclosure

Honorable Howard M. Metzenbaum
Chairman
Subcommittee on Energy
Regulation and Conservation
United States Senate
Washington, D.C. 20510

90-453 O - 88 - 4

Additional Questions For Robert F. Christin

Question 1: Please provide a copy of the Commission's rules and regulations pertaining to 7(f) applications.

Answer: The Commission has not promulgated regulations pertaining to 7(f) applications. There have been relatively few such applications since section 7(f) was enacted and these have been processed on a case-specific basis. The Commission's policies pertaining to section 7(f) are set forth in the orders deciding the individual cases. Copies of several illustrative orders are attached

Question 2: The companion bill to § 1717, H.R. 2884, was amended and passed the House of Representatives. It is now pending before the Subcommittee. As passed by the House of Representatives, H.R. 2884 seeks to eliminate the Commission's jurisdiction over all aspects of natural gas transportation by 7(f) companies, unless the transportation is from a 7(f) company to another natural gas company. Does the bill accomplish that objective, or are further technical amendments necessary? If so, please suggest whatever statutory language would be necessary to achieve that result.

Answer To accomplish this objective completely, the phrase "to ultimate consumers" would need to be deleted from line 7. Otherwise, the FERC will retain jurisdiction over transportation to entities such as local distribution companies or intrastate pipelines.

The proposed legislation is somewhat unclear concerning the extent to which states are intended to have jurisdiction over acts beyond their border. For instance, is it intended that a state may require a 7(f) company to transport gas from a particular source in another state? Or is the state's jurisdiction limited to those aspects of a transaction that occur within the state's border? Also, does the authority to regulate transportation include the authority to regulate construction? Can a state require a 7(f) company to construct facilities? Is it intended that a state can require facilities to be constructed in another state if they are required to provide adequate service in the first state?

Question 3: Section 311 of the NGPA gives the Commission authority to authorize any interstate pipeline to transport natural gas on behalf of any intrastate pipeline, and any local distribution company. If H.R. 2884, as passed by the House of Representatives were enacted, what would be the legal status of the 7(f) companies under section 311? Would they be treated as an interstate pipeline (natural gas company) or would they be treated as local distribution companies? Would enactment of the

legislation have any detrimental effect on transportation? Please explain.

Answer Under a strict reading of section 2(15) and 2(17) of the NGPA, it would appear that a 7(f) company's legal status under section 311 depends on whether the company transports natural gas "to another natural gas company." If it does, then it is transporting gas in interstate commerce and arguably would be considered an interstate pipeline under NGPA section 2(15). If it does not, then it might qualify as a local distribution company under NGPA section 2(17), to the extent the company is "engaged in the transportation, or local distribution, of natural gas and the sale of natural gas for ultimate consumption." All 7(f) companies sell natural gas for ultimate consumption. However, the Commission has never addressed whether the distribution of gas across a state line could be considered "local distribution" for purposes of section 2(17).

As noted, under a strict reading of current law, 7(f) companies could be considered interstate pipelines under NGPA section 2(15), to the extent they transport gas in interstate commerce. See Arkansas Oklahoma Gas Corporation, 33 FERC ¶ 61,197 (1985). Nevertheless, the Commission has declared that a section 7(f) company may be treated as a local distribution company for purposes of section 311 of the Natural Gas Policy Act of 1987. In other words, the 7(f) company is eligible to have gas transported "on its behalf" by an interstate pipeline. In addition, the Commission has waived its regulations when requested to permit a 7(f) company to transport gas under a blanket certificate in the same manner that intrastate pipelines are authorized to engage in such activities under NGPA section 311. E.g., Iowa - Illinois Gas and Electric Company. 39 FERC ¶ 61,016 (1987); Washington Gas Light Company, 39 FERC ¶ 61,119 (1987). The proposed legislation does not affect the status of 7(f) companies with respect to these determinations.

Whether the proposed legislation would have detrimental effects on transportation is difficult to predict. At present, only a handful of companies are affected, and the FERC would retain jurisdiction over any transportation they perform to another natural gas company. On the other hand, there is a potential that conflicts may develop among the state commissions. For instance, a state commission might order the company to transport gas for which it lacks capacity because of the demands of an upstream state. Or an upstream state might refuse to allow construction of capacity needed to serve a downstream state.

Question 4(a): Which of the companies covered by H.R. 2884 presently transport natural gas to other natural gas companies?

Answer: Arkansas Oklahoma Gas Corporation and Iowa-Illinois Gas & Electric currently transport gas for other natural gas companies. The Commission has issued a certificate authorizing such transportation to Washington Gas Light Company, but that company has not accepted the certificate. Associated Natural Gas Company has accepted a certificate authorizing such transportation but has not yet reported performing any transactions under that certificate.

Question 4(b): How would the bill affect the Commission's jurisdiction over such transportation?

Answer: The bill leaves the Commission's jurisdiction over such transportation unaffected.

Question 4(c): If the bill were enacted, would the companies subject to its provisions be treated any differently than other local distribution companies with respect to their ability to transport natural gas to other natural gas companies? Please explain.

Answer: Section 7(f) companies would need a waiver of the Commission's eligibility requirements in order to qualify for a blanket certificate under section 284.224 of the Commission's Regulations. However the Commission has granted such waivers when requested. E.g., Iowa-Illinois Gas and Electric Company, 39 FERC ¶ 61,061 (1987).

Question 5(a): It is the Subcommittee's understanding that the provision would apply to Interstate Power Company. Is that correct?

Answer: Yes.

Question 5(b): Would it be the Commission's interpretation that the language would also cover any legal successor in interest to Interstate Power Company?

Answer: It depends. If a successor acquires controlling interest in the stock of Interstate Power Company, the proposed legislation would continue to apply as long as Interstate Power Company survives as a legal entity. However, if the successor acquires the assets of Interstate Power and dissolves that company, then the proposed legislation would not continue to apply to the successor. To put it another way, Interstate Power Company, which is a legal person under the Natural Gas Act, is the only "person who received authorization for transportation service under Federal Energy Regulatory Commission, Docket No. CP86-679." As drafted, the legislation applies only to that person. If the company is dissolved in the course of an

acquisition, reorganization, or merger, then that person no longer exists.

Question 6: Intrastate pipelines are generally subject to state commission jurisdiction except for activities authorized under sections 311 and 312 of the NGPA. If they were to argue successfully that Congress grant them similar status as section 7(f) companies -- to be regulated exclusively by the states in which the gas is consumed -- would this upset FERC's open access policies?

Answer: Extending similar status to intrastate pipelines would not be detrimental to FERC's open access policies, because it would not change the current jurisdictional status of those pipelines. Under current law, states already may elect to exercise exclusive jurisdiction over any transportation by intrastate pipelines, except for their activities under NPGA section 311 and 312. 1/ Further, if an intrastate pipeline transports gas that is ultimately transported out of the state, such a transaction would necessarily involve transportation to a natural gas company (i.e., to an interstate pipeline or a 7(f) company), and the proposed legislation excludes such transactions from the states' jurisdiction.

There are fundamental differences between intrastate pipelines and 7(f) companies. The latter are engaged in retail distribution. Intrastate pipelines, on the other hand, engage in the transmission of gas and/or the sale of gas for resale.

Question 7: Assume H.R. 2884, as amended were enacted. If an end user with plants in multiple jurisdictions served by one 7(f) LDC were granted state commission authority to get firm transportation with cost-of-service rates in one jurisdiction,

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1/ See generally Westar Transmission Company, 43 FERC ¶ 61,050 (1988). In Westar a Hinshaw pipeline purchased gas from a producer in another state. The gas was delivered by an interstate pipeline pursuant to NGPA section 311(a)(1)(A). The commission held that NGPA section 601 removed from Natural Gas Act jurisdiction the Hinshaw pipeline's subsequent sales to its intrastate customers, those customers'r sales for resale, and the transportation involved in those transactions, where all of the downstream transactions occurred entirely within the state. (The fact that Westar was a Hinshaw pipeline is irrelevant. The analysis would necessarily apply to any intrastate pipeline.)

Also, note that an intrastate pipeline's transactions under NGPA sections 311(b) and 312 are irrelevant to this analysis, because they do not involve transportation.

while the other state commission denied similar treatment, would FERC step in to investigate whether there is any undue discrimination? If the states are in conflict, how would the dispute be resolved?

Answer: If H.R. 2884 were enacted, the FERC would no longer have jurisdiction to investigate under the circumstances described, since all such transportation would "be subject to the exclusive jurisdiction of the state commission in the state in which the gas is consumed." Presumably, if the states were in conflict, they would resort to the federal courts to resolve the dispute. See generally Public Utilities Commission of Rhode Island v. Attleboro Steam & Electric Company, 273 U.S. 83 (1927).

ARKANSAS
PUBLIC SERVICE COMMISSION
1000 Center
P.O. Box C-400
LITTLE ROCK 72203

Jerrell L. Clark
Director
371-1794

Robert E. Johnston
Chairman
371-1653

Patricia S. Qualls
Commissioner
371-1651

Julius D. Kearney
Commissioner
371-1456

July 7, 1988

The Honorable Howard M. Metzenbaum
United States Senate
Committee on Energy and National Resources
Washington D.C. 20510-6150

Dear Senator Metzenbaum:

Attached are my responses to the followup questions resulting from my testimony before the Subcommittee on Energy Regulation and Conservation on S. 1717.

Please let me know if I can provide any further assistance.

Sincerely,

Robert E. Johnston

Attachment

RESPONSES TO QUESTIONS FOR DR. ROBERT JOHNSTON
CHAIRMAN, ARKANSAS PUBLIC SERVICE COMMISSION

1. The FERC staff's testimony indicates that they would like to insure that the Commission retains authority to "prescribe conditions applicable to interstate transportation and to remedy any unduly discriminatory practices". During the hearing you indicated you would have to reserve judgement as to how you feel about their retaining any type of regulatory authority over these 7(f) companies. Do you feel that H. R. 2884, as passed by the House of Representatives, strikes the right balance by giving state commissions authority over 7(f) companies' transportation unless the transportation is from a 7(f) company to another natural gas company?

Yes. It is our position that H.R. 2884 restores the proper balance of regulation for 7(f) companies by reinstating state jurisdiction over transportation service to the ultimate consumers. H.R. 2884 dissolves the ambiguity created by the FERC decision in the Washington Gas Light Company (WGL) case by providing a clear distinction between FERC and state commission jurisdiction over sales and transportation services for 7(f) companies.

2. You suggested making amendments to S. 1717. H.R. 2884, as passed by the House of Representatives, included the substance of the

amendments you suggested. Do you believe that any further amendments to H.R. 2884 as passed are necessary? If so, please provide suggested statutory language.

No. At this time, we do not believe that any further modifications to H.R. 2884 are necessary. In our opinion, H.R. 2884 presently incorporates our concerns regarding the regulation of transportation for Section 7(f) companies.

3. S. 1717 and H.R. 2884 would both make transportation by 7(f) companies subject to regulation by the State commission in the State in which the gas is consumed. Upon reflection, would it be preferable to make the transportation subject to regulation by the State commission in which the service area is located?

We conclude that there would be the potential for similar problems and confusion as a result of transportation regulation based on service area location, as was evident in FERC's attempt to bifurcate jurisdiction as a result of its order in the WGL case. The problem with regulation by service area could occur in situations where a utility company's service area crossed one or more state lines. In these cases, there would be the possibility of the various state commissions, in the service areas, imposing varying terms and conditions on the same transportation service. More importantly, a

utility customer, under two or more jurisdictions, may have to pay two or more transportation rates for the same service.

We retain our belief that regulation of transportation service, by the state commission in the state in which the gas is consumed, is the best form of regulation for 7(f) companies.

4. H.R. 2884 as passed by the House of Representatives would make it possible for the affected companies to continue to transport natural gas to other natural gas companies.

(a) Are other local distribution companies typically authorized to transport natural gas to other natural gas companies?

(b) Would MARUC support allowing local distribution companies to transport natural gas to other natural gas companies?

(c) If the bill were enacted, would the companies subject to its provisions be treated any differently than other local distribution companies with respect to their ability to transport natural gas to other natural gas companies? Please explain?

(a) It is our understanding that there are Section 7(f) companies that transport natural gas to other natural gas companies (i.e., pipelines) for ultimate consumption in other states.

(b) In our opinion, transportation of gas by a Section 7(f) company for pipeline off-system sales should continue to be allowed under the jurisdiction of FERC. Our concern is that the

transportation by 7(f) companies, for use by ultimate consumers of gas, remain under state regulation.

(c) No. We believe that Section 7(f) transactions involving the transportation of gas to interstate pipelines should be subjected to FERC jurisdiction in a manner similar to the treatment received by non-Section 7(f) companies with the ability to transport interstate gas to other natural gas companies.

Arkansas Western Gas Company
A subsidiary of Southwestern Energy Company

1083 Sain Street
P.O. Box 1408
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Charles E. Scharlau
Chairman and President

July 8, 1988

Honorable Howard M. Metzenbaum
Chairman
Subcommittee on Energy Regulation
and Conservation
United States Senate
Washington, D.C. 20510-6150

Dear Senator Metzenbaum:

Thank you for your letter of June 27, 1988 and the attached questions concerning S. 1717. My responses are as follows:

1. Question. S. 1717 and H.R. 2884 would both make transportation by 7(f) companies subject to regulation by the State commission in the State in which the gas is consumed. Would it be preferable to make the transportation subject to regulation by the State commission in which the service area is located?

Answer. No, it would not be preferable. At first blush, the proposition would seem logical, that is, each State commission would regulate the transportation of gas through facilities located in its state. However, there are two major reasons why this bifurcated regulatory scheme would not be preferable.

First, it would be needlessly burdensome. In order for a shipper to receive transportation service, the Section 7(f) company would have to obtain authorization from more than one State commission. The entire authorization process

would be replicated. This would be inefficient and uneconomic from both a regulatory and an industry perspective. Regulators in each state would have to review and process the application concerning the transportation leg in their state. The Section 7(f) company and the shipper would be required to appear and defend any required filings in two or more regulatory fora. Although all Section 7(f) companies are more than likely equipped to simultaneously prosecute rate and other required filings before each of the State commissions having jurisdiction over its rates and services, requiring an end-user to travel to and appear before a foreign state tribunal may be an intolerable and expensive burden to the end-user, which in many instances will be no more than a relatively small commercial customer. Moreover, the need for more than one State commission to authorize the transportation would likely result in delays or inconsistent terms and conditions being imposed in each state, which could impair or impede the shipper's receipt of the gas. In short, a bifurcated type of regulation would result in a needless increase in regulatory review, expense, and delay, and in potentially inconsistent or conflicting regulatory requirements.

Second, it would be an unnecessary burden on interstate commerce. If each state were able to regulate the

transportation rates of end-users located in a different state, cost-shifting could result. Because the end-user ultimately responsible for paying the transportation rate would be located outside of its regulatory jurisdiction, the upstream State commission would have an incentive to establish a transportation rate for the out-of-state end-user customer as high as possible in order to lower the retail rates paid by those end-users which are subject to its jurisdiction. Additionally, an upstream commission could disrupt the flow of gas to the shipper. As far as I am aware, the regulatory scheme posed by your question is unprecedented, and may raise significant Commerce Clause issues.

The bottom line is that a Section 7(f) company's transportation services should be treated no differently than from its sales, i.e., the rates, terms and conditions of such transportation service should be regulated by the State in which the end-user is located. The establishment of transportation rates raises ratemaking issues which are essentially identical to those which are routinely resolved in the establishment of a Section 7(f) company's retail sales rates, even if the gas sold is delivered part of the way through a Section 7(f) company's facilities located in another state. In these situations, the State commission

allocates the cost of those common facilities used to serve customers located in their respective states. Generally, such an allocation is made on the basis of each State's usage of those facilities. The various State commissions have for years efficiently and effectively regulated the local distribution sales of gas by Section 7(f) companies using such an allocation scheme. This legislation should do nothing more than apply the same regulatory scheme to transportation.

2. Question. Please provide a copy of your FERC Order No. 63 blanket certificate authorizing interstate transportation of gas.

Answer. The order is attached.

3. Question. H.R. 2884 as passed by the House of Representatives would make it possible for the affected companies to continue to transport natural gas to other natural gas companies.

(a) Are other local distribution companies typically authorized to transport natural gas to other natural gas companies?

Answer. Yes. Beginning in 1980, the FERC issued Order No. 63 which promulgated regulations (now codified at

18 C.F.R. § 284.224) 1/ for the specific purpose of permitting LDCs, including Hinshaw companies, to engage in interstate transportation and sales for resales without subjecting their intrastate (i.e., local distribution) services to FERC's jurisdiction. 2/ Because such transportation services are interstate in character, all or nearly all of an LDC's Order No. 63 blanket certificate transportation will be to an interstate pipeline (i.e., a "natural-gas company") which will either purchase the gas as system supply for resale, or transport the gas to an end-user.

It is my understanding that approximately 25 local distribution companies have been issued Order No. 63 blanket

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1/ Under 18 C.F.R. § 284.224, LDCs are authorized to apply for and obtain what are known as Order No. 63 blanket certificates which authorize them to engage in the interstate transportation, sale and assignment of gas "to the same extent and in the same manner that intrastate pipelines are authorized to engage in such activities under [NGPA sections 311 and 312]." See 18 C.F.R. § 284.224(b); Order No. 63, 45 Fed. Reg. 1872 (1980), FERC Stats. and Regs. Regulation Preambles 1977-81, ¶ 30,118 (1980).

2/ Initially, the regulations applied only to transportation services by Hinshaw pipelines. Three years later, in Order No. 319, the Commission expanded the Order No. 63 blanket certificate program established for Hinshaw pipelines to include all local distribution companies served by interstate pipelines. Order No. 319, 48 Fed. Reg. 34,875, FERC Stats. and Regs., Regulation Preambles 1982-85, ¶ 30,476 (1983).

certificates and are now transporting gas to "natural-gas companies" under that authorization. 3/

(b) Congress has not authorized local distribution companies to transport natural gas under Section 311 of the NGPA. Wouldn't the provision be a bit like having your cake and eating it too -- that is, some of the LDC transactions would be subject to State commission regulation while some transactions would be subject to FERC jurisdiction. What public policy justification can there be for approving such a provision?

Answer. No, the provision would not be like having your cake and eating it too. Rather, it would do no more than extend to Section 7(f) companies the same regulatory framework created under the NGPA and the NGA which now exists for intrastate pipelines under NGPA Section 311 and for LDCs (including Hinshaw companies) under Order No. 63 blanket certificates.

Under H.R. 2884, as amended, a Section 7(f) company's transportation service to its on-system retail customers would be subject exclusively to the State commission of the

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3/ Consistent with its view that Section 7(f) companies are essentially LDCs, the FERC has granted a number of Section 7(f) companies, including Associated and Washington Gas Light Company, Order No. 63 blanket certificates.

State in which the end-user is located, whereas its transportation services to interstate pipelines for redelivery to customers located in other states would be subject to the FERC's jurisdiction. In my opinion, such an approach is justified because such treatment: (1) does no more than put Section 7(f) companies on an equal footing with the other 1,400 LDCs in the country; and (2) strikes an appropriate balance between state and federal regulators. These ideas can be better understood when put in an historical perspective.

An important goal of the NGPA was to eliminate the bifurcation of the natural gas industry into separate and distinct interstate and intrastate markets. To achieve this goal, Congress adopted NGPA Section 311, which, among other things, authorizes intrastate pipelines to transport gas for interstate pipelines and local distribution companies without subjecting the intrastate pipeline's intrastate services (including transportation services) to the FERC's NGA jurisdiction.

NGPA Section 311 does not authorize LDCs to engage in similar interstate transportation services without becoming fully subject to the FERC's jurisdiction under the NGA. In fact, it was precisely because of this omission that the FERC established its Order No. 63 blanket certificate

program. The FERC, in Order No. 63 determined that the effectiveness of Section 311 was diminished because the NGPA's regulatory scheme did not account for all potential intrastate transporters of natural gas. As discussed above, 4/ to rectify this problem, the Commission issued Order Nos. 63 and 319 to permit LDCs (including Hinshaw pipelines) to apply for NGA Section 7(c) blanket certificate authority to transport and sell gas in interstate commerce on the same basis intrastate pipelines may do so under NGPA Sections 311 and 312. In other words, LDCs were permitted to engage in the interstate transportation of gas (which interstate service would be subject to FERC regulation), without subjecting their intrastate services (including transportation) to FERC regulation. The Commission issued Order Nos. 63 and 319 not only to further Congress' goal of eliminating a bifurcated natural gas market, but also to encourage the efficient and economic use of existing transportation facilities. In this regard, the Commission hoped local distribution companies would use their "transportation facilities to transport gas, thereby eliminating the need for interstate pipelines to build

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4/ See supra, n. 2.

duplicate facilities or use less direct transportation routes." 5/

Subsequently, in Order Nos. 436 and 436-A, 6/ the FERC established regulations which required any intrastate pipelines and LDCs engaging in interstate transportation under NGPA Section 311 or an Order No. 63 blanket certificate to provide "such" interstate transportation on a non-discriminatory basis. The FERC also made it very clear that in so doing, it "has absolutely no intention of regulating intrastate transportation of natural gas." 7/ In other words, as was the case since the enactment of the NGPA and the issuance of Order No. 63, those intrastate pipelines and LDCs opting to provide interstate transportation services could continue to do so without subjecting their intrastate transportation services to FERC jurisdiction. Such intrastate transportation services would remain subject

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5/ Order No. 319, supra, FERC Stats. and Regs., Regulation Preambles 1982-85, at 30,621.

6/ Order No. 436, 50 Fed. Reg. 42,408 (1985); Order No. 436-A, 50 Fed. Reg. 52,217 (1985).

7/ Order No. 436, 50 Fed. Reg. at 42,430 ("[T]he Commission will not intrude on local activities beyond its jurisdiction."), FERC Stats. and Regs. Regulation Preambles 1982-85, ¶ 30,665, p. 31,503 (1985); see also Order No. 436-A, 50 Fed. Reg. 52,217, FERC Stats. and Regs., Regulation Preambles 1982-85, ¶ 31,694.

to the exclusive regulation of the relevant State commission. 8/

As a result of Order Nos. 63, 319, and 436, local distribution companies can be and are subject to both federal and state jurisdiction. The resulting dual regulation strikes an appropriate balance by giving to the FERC limited jurisdiction over the interstate transportation of gas by what are clearly intrastate companies, while at the same time preserving the jurisdiction of the affected State commission over those same companies' intrastate transportation services to its retail customers. There is no good reason that I am aware of to treat Section 7(f) companies, which are essentially LDCs, any differently from LDCs located in a single state.

It should be further observed that preserving the FERC's jurisdiction over a Section 7(f) company's transportation to an interstate pipeline (but excluding all other transportation services) makes sense as a practical matter. In the absence of the proviso included in H.R. 2884, the State commission of the state in which the

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8/ This above regulatory framework was essentially left unmodified by the FERC's Order No. 500. 52 Fed. Reg. 30,334 (1987).

gas is consumed would have the jurisdiction to establish the Section 7(f) company's transportation rates and terms of service. Such a result makes sense if the end-user is one of the Section 7(f) company's intrastate retail customers. It does not make sense, however, if the Section 7(f) company is located in Arkansas and the end-user is located in New York, thus giving the New York Public Service Commission jurisdiction to set the rates, terms and conditions over the Arkansas transporter's service to the New York end-user.

The impracticality of the above scheme becomes even more apparent when viewed in the reality of today's market. With the recent emergence of a substantial number of natural gas marketers, it is not unusual for the gas transported by Section 7(f) companies to an interstate pipeline to be sold by a producer to a marketer for resale to customers located throughout the United States. Unless the FERC retains jurisdiction over such truly interstate transportation services, the rates, terms and conditions of a Section 7(f) company's transportation services to an interstate pipeline could be subject to as many as 48 different State commissions.

(c) If the bill were enacted, would the companies subject to its provisions be treated any differently than other local distribution companies with respect to their

ability to transport natural gas to other natural gas companies? Please explain.

Answer. No. As discussed above, the purpose and effect of H.R. 2884, as amended, is to eliminate the unnecessary disparate regulatory treatment given to local distribution companies and Section 7(f) companies. The amendment to H.R. 2884 on the House floor which added the proviso that legislation "shall not apply the transportation of natural gas to another natural gas company," accomplishes that result.

In summary, under present law, a local distribution company that transports gas to an on-system customer is subject to regulation only by the State commission. Only if the local distribution company holds a blanket transportation certificate under Section 284.224 of the Commission's Regulations are certain transportation services performed by the company subject to federal jurisdiction. On the other hand, under present law, when a Section 7(f) company transports gas to an on-system customer, the service is subject to dual federal and state regulation because the gas moves in interstate commerce. This legislation would eliminate federal jurisdiction over the Section 7(f) company's retail transportation services. If, and only if, a Section 7(f) company chose to apply for an Order No. 63

blanket certificate, would it be subject to limited federal regulation as would be the case with any LDC which elects to provide transportation under an Order No. 63 blanket certificate.

I hope that my responses are of help to the subcommittee and their consideration of this bill. I would be glad to respond to any other questions or provide any other information that I could.

Sincerely yours,

Charles E. Scharlau

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon and Charles A. Trabandt.

Associated Natural Gas Company, a Division of Arkansas Western Gas Company	}	Docket No. CP88-101-000
Associated Natural Gas Company	}	
Arkansas Western Gas Company	}	

ORDER ISSUING CERTIFICATES, APPROVING ABANDONMENT AND DEFINING SERVICE AREA

(Issued May 23, 1988)

Associated Natural Gas Company (Associated) is an existing jurisdictional pipeline that operates ten Hinshaw pipeline facilities and one interstate pipeline. Arkansas Western Gas Company (Ark West) is an existing intrastate pipeline. On December 1, 1987, these parties filed an application, as supplemented, requesting various authorizations to implement their impending merger.

Pursuant to section 7(b) of the Natural Gas Act (NGA), the applicants request permission and approval for the abandonment by Associated of facilities used for the transportation of natural gas in interstate commerce. The applicants also request, pursuant to section 7(c) of the NGA, the issuance of a certificate of public convenience and necessity authorizing Associated Natural Gas Company, a Division of Arkansas Western Gas Company (the ANG Division), a newly formed entity, to acquire by merger and operate the facilities to be abandoned by Associated. The applicants request that we determine a service area pursuant to section 7(f) of the NGA within which the ANG Division may enlarge or extend its facilities without first seeking additional authorization from the Commission.

The applicants also seek a declaratory order that neither the proposed acquisition and operation of Associated's facilities, nor the issuance of the requested certificate to the ANG Division, will affect the nonjurisdictional status of Ark

West's existing intrastate facilities 1/ or of Associated's Hinshaw activities. The applicants further request a declaratory order that the delivery of gas by Ark West to interstate pipelines for redelivery to the ANG Division for use as system supply is not subject to the jurisdiction of the Commission.

Finally, the applicants request the issuance of an Order No. 63 blanket certificate authorizing Ark West, following the merger, to engage in the sale, transportation, or assignment of natural gas to third parties to the same extent that intrastate pipelines are authorized to engage in these activities under sections 311 and 312 of the Natural Gas Policy Act (NGPA).

We will approve the abandonment, authorize the acquisition by merger and the operation the of the abandoned facilities, determine the service area, make the requested jurisdictional determinations, and issue the Order No. 63 blanket certificate, with conditions, as discussed below.

Background

Associated is a wholly-owned subsidiary of Arkansas Power & Light Company (AP&L), which itself is a wholly-owned subsidiary of Middle South Utilities, Inc. (MSU). Associated is engaged in the distribution of natural gas for residential, commercial, and industrial use in Arkansas and Missouri. It engages in no sales for resale and has no tariffs on file with the Commission. Associated's rates, services, and facilities in Arkansas are regulated by the Arkansas Public Service Commission, and the facilities in Missouri are regulated by the Missouri Public Service Commission.

Associated's natural gas facilities consist of approximately 1,949 miles of transmission and distribution lines. The facilities are operated as eleven non-integrated systems, ten of which are located entirely within either Arkansas or Missouri. All of the gas received by these ten systems is received and consumed entirely within the state where the system is located. By order of February 24, 1987, 2/ the Commission determined that these ten systems are Hinshaw pipeline facilities exempt from the Commission's jurisdiction under section 1(c) of the NGA.

The eleventh Associated system consists of a gas pipeline that crosses the Arkansas-Missouri border (the ANG Interstate Pipeline) and serves customers in both states. Associated also

1/ Except for the change in Ark West's status to a local distribution company for the purpose of sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA).

2/ Associated Natural Gas Company, 38 FERC ¶ 62,188 (1987).

ATTACHMENT

owns and operates as part of that system a liquefied natural gas (LNG) facility near Blytheville, Arkansas. This facility is operated to meet the peak day requirements of Associated's customers. The ANG Interstate Pipeline was acquired by Associated from Arkansas-Missouri Power Company (Ark-Mo), which was then Associated's parent. 1/ Associated indicates that, with respect to the ten intrastate systems, it is both a non-jurisdictional Hinshaw pipeline under the NGA and a local distribution company for purposes of section 311(a) of the NGPA. Additionally, it is a natural gas company within the meaning of section 1(b) and 2(6) of the NGA with respect to the ANG Interstate Pipeline.

Ark West is a wholly-owned subsidiary of Southwestern Energy Company (Southwestern). It owns and operates intrastate pipeline and local distribution facilities in northwest Arkansas. Its rates, facilities, and services are regulated by the Arkansas Public Service Commission. Ark West recently received authorization to conduct business in Missouri.

A map illustrating the location of the present Ark West and Associated systems as well as other pipelines in the area is contained in Appendix A to this order.

Proposal

The Securities and Exchange Commission (SEC) approved MSU's acquisition of Associated's then parent corporation, Ark-Mo, subject to the stipulation that MSU dispose of any interests in the gas properties of Ark-Mo and Associated. 4/ AP&L, acting pursuant to the 1971 SEC order, solicited a proposal from Southwestern, Ark West's parent corporation, for the purchase of Associated. After negotiations, AP&L and Associated entered into an agreement with Southwestern and Ark West, dated September 1, 1987, for Ark West to acquire Associated by merger.

1. Abandonment and Acquisition

Under this agreement, Associated will be merged into Ark West, and its facilities, including the ANG Interstate Pipeline, will be operated as a division of Ark West. Since the ANG Interstate Pipeline is subject to a certificate, the applicants request authorization for its abandonment by Associated and its acquisition and operation by the ANG Division. All services currently rendered through Associated's facilities will be

1/ The acquisition and operation of these facilities by Associated was authorized in Arkansas-Missouri Power Company and Associated Natural Gas Company, 3 FERC ¶ 61,107 (1978).

4/ Middle South Utilities, Inc., 44 SEC 548 (1971).

continued by the ANG Division. The applicants submit that the transfer will accomplish full compliance with the 1971 SEC order and will increase Ark West's ability to serve its customers. Other benefits they expect to realize include lowered operational and maintenance expenses, greater flexibility and reliability of service, and potential reductions in rates and gas costs.

Ark West anticipates a need to obtain additional supplies of gas for the newly-formed ANG Division and to transfer this gas from Ark West to the ANG Division for use as system supply. Ark West proposes to deliver the gas through its existing facilities to interstate pipelines for redelivery to the ANG Division. The applicants contemplate that the interstate pipelines would perform this transportation pursuant to section 311(a) of the NGPA or a blanket certificate. Except for the possible construction of taps on Ark West's facilities to deliver gas to the interstate pipelines, this transfer of gas will not require new construction. 5/ The redelivery will be made through existing points of interconnection between Associated and the interstate pipelines.

The total cost of the acquisition to Ark West will be $31,294,600. Ark West will make a cash payment of $23,094,600 6/ and will assume $8,200,000 of Associated's long-term debt. 7/ Of the $31,194,600 total cost to Ark West, $4,470,605 is allocable to the jurisdictional facilities as of June 30, 1987. The estimated depreciated book cost of the facilities on the same date was $23,000,000. Of this amount, $3,356,429 represents the depreciated book cost of the juriedictional facilities. If in the future the ANG Division seeks to establish rates subject to the Commission's jurisdiction for these facilities it will submit

5/ We note that appropriate authorization will have to be obtained for the construction of any jurisdictional facilities. This issue will be addressed later in this order.

6/ The cash payment will be financed through a note payable to Southwestern in the principal amount of $14,971,000, payable over a 30-month period at an interest rate equal to Southwestern's then current embedded cost of long-term debt (this figure was 9.33 percent when the application was filed). The remaining $8,123,600 will be obtained through a capital contribution from Southwestern.

7/ The long-term debt to be assumed consists of Associated's first mortgage bonds in the principal amount of $4,200,000, due March 1, 1993, bearing an interest rate of 9-3/8 percent, and a $4,000,000 7-1/2 percent subordinated note, due March 15, 1993, currently held by AP&L but which will be assigned to Ark West's parent, Southwestern.

data to support any request that it be allowed to earn a return of the amount of the excess of the purchase price over the depreciated book cost of the jurisdictional facilities.

2. Service Area Determination

The ANG Division requests that the Commission determine a service area pursuant to section 7(f) of the NGA within which it may enlarge or extend its facilities without further authorization. The proposed service area is depicted in Appendix B to this order and includes portions of northeast Arkansas (Crittenden, Craighead, and Mississippi Counties) and southeast Missouri (Dunklin, Pemiscot, Stoddard and New Madrid Counties). All of Associated's current interstate facilities, including the LNG facility, are included in this service area. The applicants contend that this determination will provide the ANG Division the flexibility necessary to fully serve its existing and future distribution customers. The ANG Division functions primarily as a local distributor of natural gas and engages in no sales for resale. Its retail sales, rates and services are fully subject to state regulation. 8/

3. Declaratory Order

The applicants also request that the Commission issue a declaratory order addressing two issues. First, the applicants seek a determination that the fact that Ark West, through the ANG Division, will own and operate an interstate pipeline will not affect the nonjurisdictional status of Ark West's existing intrastate facilities and services or of the ten Associated systems that were previously found to be exempt Hinshaw pipeline facilities. The applicants also request that the Commission find that these ten systems will still qualify as local distribution companies eligible to have gas transported on their behalf under section 311(a) of the NGPA.

Second, the applicants request that the Commission find that the proposed deliveries of gas by Ark West to an interstate pipeline for subsequent delivery to the ANG Division for use as system supply, and the construction of any necessary delivery taps on Ark West's system, will not affect the nonjurisdictional status of Ark West's existing facilities and services. The applicants state that this finding would provide the ANG Division with access to gas reserves that are immediately accessible to Ark West and would benefit the customers of both entities. The applicants submit that the proposed intracorporate transfer of

8/ The applicants submitted letters from the Arkansas Public Service Commission and the Missouri Public Service Commission confirming that the states will exercise jurisdiction to regulate the ANG Division's retail sales.

gas will be a part of the combined company's local distribution activities and, as such, is exempt pursuant to section 1(b) of the NGA.

4. Blanket Certificate

In addition to engaging in the intracorporate transfer of gas described above, Ark West anticipates that it will transport third-party owned gas to interstate pipelines for redelivery to persons other than the ANG Division. Although Ark West currently is an intrastate pipeline eligible to engage in interstate transportation performed pursuant to section 311(a)(2) of the NGPA, it believes that it will become a local distribution company following acquisition of Associated's Hinshaw pipeline systems. Accordingly, Ark West requests that it be issued a blanket certificate pursuant to section 284.224 of the Commission's Regulations authorizing interstate transportation, sales, and assignment of gas through its nonjurisdictional facilities.

In support of this request, Ark West has submitted the information required by section 284.224. Ark West elects to have its rates for transportation determined by the Commission under section 284.123(b)(2)(i) of the Commission's Regulations. Ark West requests the determination of a fair and equitable rate that will apply only to transportation through Ark West's existing intrastate facilities. 9/ Ark West indicates that it will file in Docket No. ST88-1-000 updated cost data and other information to establish a fair and equitable rate for Ark West's section 311 transportation.

Intervention

After due notice of the application by publication in the Federal Register on December 18, 1987 (52 Fed. Reg. 48146), a timely unopposed motion to intervene was filed by Mississippi River Transmission Corporation. 10/ No further motions to intervene, notices of intervention, or protests to the granting of the application have been filed.

9/ There is no gas production near Associated's Hinshaw systems. Therefore, Ark West is not now proposing any transportation rates for those systems.

10/ Timely, unopposed motions to intervene are granted by operation of Rule 214.

Discussion

1. Abandonment and Acquisition

The facilities that Associated proposes to abandon (the AMG Interstate Pipeline) and that the AMG Division proposes to acquire by merger and operate are used to transport natural gas in interstate commerce. As such, the abandonment and acquisition and operation of these facilities are subject to the Commission's jurisdiction and to the requirements of subsections (b), (c), and (e) of the NGA.

We find that the proposed abandonment by Associated and acquisition and operation by the AMG Division are permitted and required, respectively, by the public convenience and necessity. Approval of the proposed transfer of Associated's facilities will accomplish full compliance with the SEC's 1971 order. The merger of the Associated and Ark West systems will increase Ark West's ability to adequately and reliably serve its customers by increasing its operational flexibility. The large number of interstate pipelines currently serving Associated will enable Ark West to deliver newly-obtained system supply gas to the AMG Division.

2. Service Area Determination.

We conclude it is appropriate to determine a service area 11/ for the AMG Division as depicted in Appendix B. In prior cases, we have determined a service area under section 7(f) when we found the company functioned primarily as a local distributor of natural gas, even though its facilities crossed state lines. 12/ Despite the fact that the AMG Division, upon the merger of Associated's AMG Interstate Pipeline, will be a natural gas company subject to our jurisdiction, with facilities

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11/ Section 7(f) of the NGA provides:

> The Commission, after a hearing had upon its own motion or upon application, may determine the area to which each authorization under this section is to be limited. Within such service area as determined by the Commission a natural-gas company may enlarge or extend its facilities for the purpose of supplying increased market demands in such service area without further authorization.

12/ See Arkansas Oklahoma Gas Corp., 33 FERC ¶ 61,197 (1985); Shenandoah Gas Co., 16 FERC ¶ 61,087 (1981); Great River Gas Co., 14 FERC ¶ 61,167 (1981); and National Fuel Gas Distribution Corp., 13 FERC ¶ 61,200 (1980).

crossing the Arkansas-Missouri border, it will continue to function essentially as a local distributor of natural gas after the merger.

We have considered four other factors in making service area determinations: (1) whether the company makes sales for resale; (2) whether its rates are regulated by state or local agencies; (3) whether the company has an extensive transmission system; and (4) the concerns of other companies providing service in the same area. 13/ The AMG Division will engage in no sales for resale and its retail sales rates and services will be regulated by the Arkansas Public Service Commission and the Missouri Public Service Commission. Further, its transmission system is not extensive. Although other natural gas companies engage in some retail sales within the proposed service area, 14/ Associated states that it does not request a service area determination for the purpose of making sales to those customers currently being served by other companies. In addition, none of these companies intervened to oppose this authorization. Accordingly, we conclude that each of the criteria for determining a service area has been met. Our determination of a service area will enable the AMG Division to enlarge or expand its facilities to better serve its customers in the area without seeking further approval from the Commission.

3. Declaratory Order

The applicants request that the Commission issue a declaratory order resolving several issues. The first is whether the issuance of a section 7(c) certificate to the AMG Division will affect the nonjurisdictional status of Ark West's existing intrastate pipeline and local distribution facilities or of the ten Associated systems previously determined by the Commission to be exempt Hinshaw pipeline systems.

As the applicants note, an individual company can be engaged in both jurisdictional and nonjurisdictional activities. 15/ Accordingly, the mere fact that Ark West, through the AMG Division, will own and operate an interstate pipeline will not, standing alone, affect the nonjurisdictional status of other

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13/ Iowa-Illinois Gas and Electric Company, 39 FERC ¶ 61,016 (1987).

14/ The areas in which other companies serve customers are identified in Appendix B to this order.

15/ See American Distribution Company, 28 FERC ¶ 61,323 (1984); Phillips Gas Pipeline Co., 29 FERC ¶ 61,118 (1984); Michigan Wisconsin Pipe Line Co., 52 F.P.C. 677 (1974); and Michigan Distribution Pipeline Co., 56 F.P.C. 1841 (1971).

facilities. As long as the operations of the nonjurisdictional facilities are not changed as a result of the merger, the prior finding that the ten Associated facilities are Hinshaw pipeline facilities exempt from the Commission's jurisdiction under section 1(c) of the NGA, and the fact that Ark West's intrastate pipeline and local distribution facilities are exempt from the Commission's jurisdiction under section 1(b) of the NGA, will not be affected. The applicants state that Arkansas will continue to regulate these facilities and services and that no changes to the facilities, operations, or services will take place as a result of the merger. 16/ On this basis, we also conclude that the ten Hinshaw pipeline systems will, after the merger, still qualify as local distribution companies eligible to have gas transported on their behalf under section 311(a) of the NGPA.

The applicants also request that we declare that the delivery of gas by Ark West to the ANG Division via an interstate pipeline and the construction and operation of any taps on Ark West's system for the purpose of delivering that gas to an interstate pipeline are exempt from the Commission's jurisdiction pursuant to section 1(b) of the NGA. 17/ The applicants characterize this delivery as an intracorporate transfer of natural gas exempt from the Commission's jurisdiction. The applicants indicate that the system supply gas transferred from Ark West's gathering area to the ANG Division will be transferred at Ark West's weighted average cost of system supply gas (WACOG).

We find that the proposed intracorporate transfer of gas is part of the local distribution functions of Ark West and the ANG Division (which are divisions of the same corporation). The mere fact that an interstate pipeline receives the gas from Ark West for delivery to the ANG Division (or to other interstate pipelines for subsequent delivery to the ANG Division) does not, standing alone, subject the transfer to the jurisdiction of the Commission as a sale for resale. This is particularly true in light of the fact that the gas will be transferred at Ark West's WACOG. Based on the evidence of record, it appears that the transfer will be incidental to the merged company's nonjurisdictional functions.

16/ We note that exemptions under section 1(c) of the NGA are self implementing. Accordingly, Ark West is not required to seek to be substituted for Associated or to apply for a new declaration that Associated's facilities are still exempt under section 1(c). To the extent that Ark West still qualifies under section 1(c), these facilities will continue to be exempt from the Commission's jurisdiction.

17/ Section 1(b) exempts from the Commission's jurisdiction the local distribution of natural gas and the facilities used for such distribution.

By providing the ANG Division access to gas supplies located near Ark West's facilities for use as system supply, customers of both Ark West and the ANG Division will benefit. The transfer will serve a load balancing function on both systems, enhance Ark West's ability to plan for and meet the long-term requirements of its ratepayers, and provide greater reliability and flexibility of service on both systems. Finally, the intracompany allocation of facility costs and any necessary construction will be subject to state regulation. We will exercise jurisdiction over any interstate pipeline transporters. Therefore, each aspect of the transfer will be subject to regulation by the appropriate agency without any regulatory gap. We conclude that the transfer is exempt from Commission jurisdiction under section 1(b) of the NGA.

However, the construction of any taps to connect Ark West's intrastate system to a downstream interstate pipeline is directly related to the interstate transportation and as such is subject to the jurisdiction of the Commission. The interstate pipeline can receive authorization to construct these receipt points either under section 311 of the NGPA, under a blanket certificate, or upon an application under section 7(c) of the NGA. If agreed to by the parties, Ark West can reimburse the interstate pipeline for any construction expenses.

4. Blanket Certificate

Ark West proposes to deliver third-party owned gas to interstate pipelines for redelivery to end users not affiliated with Ark West. Ark West is currently an intrastate pipeline eligible to engage in interstate transportation pursuant to section 311(a)(2) of the NGPA. However, after it acquires the ten Associated Hinshaw pipeline systems, it believes that its status will change to that of a local distribution company. 18/ Ark West therefore requests that it be issued a blanket certificate authorizing the interstate transportation, sales, and assignment of natural gas through its nonjurisdictional facilities. It elects to have its rates for transportation determined by the Commission pursuant to section 284.123(b)(2)(i) of the Regulations.

18/ In Order No. 63, FERC Stats. and Regs., Regulations Preambles, 1977-1981, ¶ 30,118 at p. 30,825 (1980), the Commission determined that Hinshaw pipelines are local distribution companies within the meaning of section 2(17) of the NGPA. Further, companies owning both intrastate and Hinshaw pipeline facilities (Ark West's post-merger situation) are not considered intrastate pipelines under the NGPA and therefore are not eligible to engage in section 311 transportation.

Section 284.224 of the Commission's Regulations permits any Hinshaw pipeline or local distribution company that is served by an interstate pipeline to apply for a blanket certificate to sell and transport gas in interstate commerce as if the company were an intrastate pipeline for purposes of sections 311 and 312 of the NGPA. We will grant a blanket certificate to such local distribution company or Hinshaw pipeline under our regulations "[i]f required by the present or future public convenience and necessity." 19/

Although Ark West does not seek approval of a rate for transportation through Associated's Hinshaw pipeline systems, Ark West does indicate that it could receive such a request under the blanket certificate. Since the Hinshaw facilities will be operated by the AMG Division, which will also operate the interstate pipeline facilities acquired from Associated, we deem the application for the blanket certificate filed by Ark West to include the AMG Division. In recent orders 20/ we have granted a comparable blanket certificate pursuant to section 284.224 to an interstate pipeline that was functioning primarily as a local distribution company. We did so by waiving the eligibility requirements in section 284.224. For the same reasons, we will waive that requirement for Ark West and the AMG Division, and will grant Ark West and the AMG Division a blanket certificate to transport gas, pursuant to section 284.224, in the same manner that intrastate pipelines are authorized to engage in such activities under sections 311 and 312 of the NGPA. We find that the issuance of a blanket certificate is required by the public convenience and necessity because it will enable Ark West and the AMG Division to transport gas more efficiently and at less expense, for delivery to end-users on its system.

Environmental Impact

The Commission prepared an environmental assessment (EA) of the impact of the proposal. Based on concerns resulting from prior site inspections of the LNG facility operated by Associated, we will require the AMG Division to continue to file semi-annual operations and maintenance reports for its Blytheville, Arkansas, LNG plant and to participate in the Commission's LNG plant inspection program until the Commission's concerns about the LNG plant have been alleviated. Based on the information in the EA, and with this condition, we find that

19/ 18 C.F.R. § 284.224 (1986).

20/ Washington Gas Light Company, 39 FERC ¶ 61,119 (1987); Iowa-Illinois Gas and Electric Company, 39 FERC ¶ 61,016 (1987); and Arkansas Oklahoma Gas Corporation, 33 FERC ¶ 61,197 (1985).

approval of this proposal does not constitute a major Federal action significantly affecting the quality of the human environment.

At a hearing held on May 23, 1988, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

(A) Permission for and approval of the abandonment by Associated of the ANG Interstate Pipeline, as described above and in the application, are granted.

(B) Associated shall notify the Commission of the date of abandonment within 10 days thereof.

(C) A certificate of public convenience and necessity is issued to Associated Natural Gas Company, a division of Arkansas Western Gas Company, authorizing the acquisition by merger and the operation of the facilities abandoned by Associated, as described above and in the application.

(D) Ark West shall file the executed document by which Associated is merged into Ark West within 10 days of the merger.

(E) The certificate issued in paragraph (C) above is conditioned upon Ark West's compliance with paragraphs (a), (c)(3), (d), and (e) of section 157.20 of the Commission's Regulations.

(F) The acquisition authorized in paragraph (C) shall be consummated and the acquired system shall be placed in actual operation by the AMG Division within 60 days from the date of this order as provided by paragraph (b) of section 157.20 of the Commission's Regulations.

(G) Pursuant to section 7(f) of the NGA, we determine that the AMG Division service area includes the area depicted in Appendix B.

(H) A blanket certificate of public convenience and necessity is issued to Ark West and the AMG Division pursuant to section 284.224 of the Commission's Regulations, to conduct activities to the same extent as intrastate pipelines under section 311 of the NGPA. For that purpose, the eligibility requirement in section 284.224 is waived.

(I) Ark West and the AMG Division shall petition the Commission for rate approval prior to the commencement of each

individual transaction under the blanket certificate. Ark West and the ANG Division will be required to file information showing that the proposed rates and charges are fair and equitable for each transaction as provided in section 284.123(b)(2) of the Commission's Regulations.

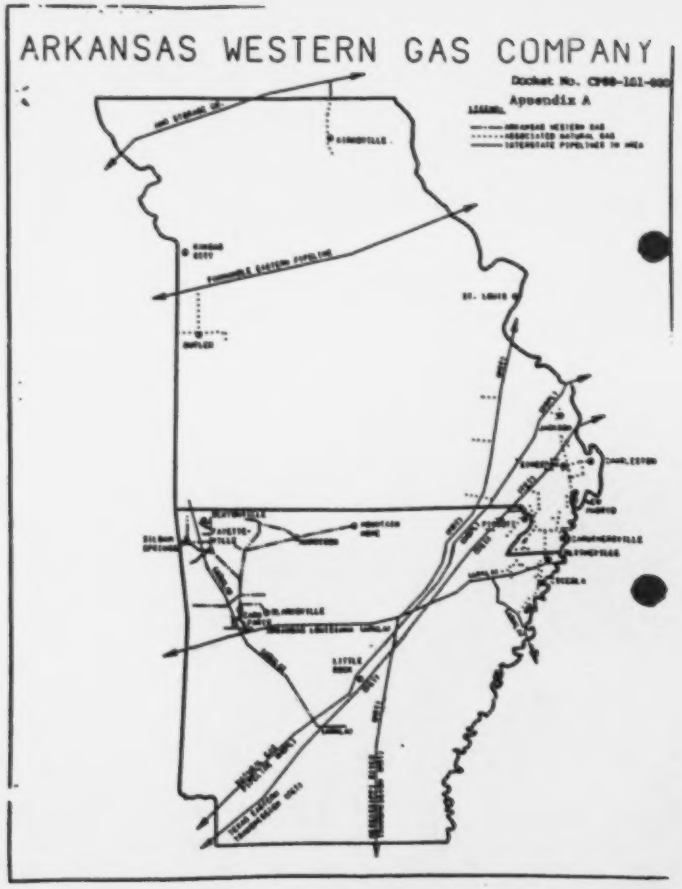
(J) With respect to the blanket certificate, Ark West shall comply with sections 157.20(a) and (e) and 284.224 of the Commission's Regulations.

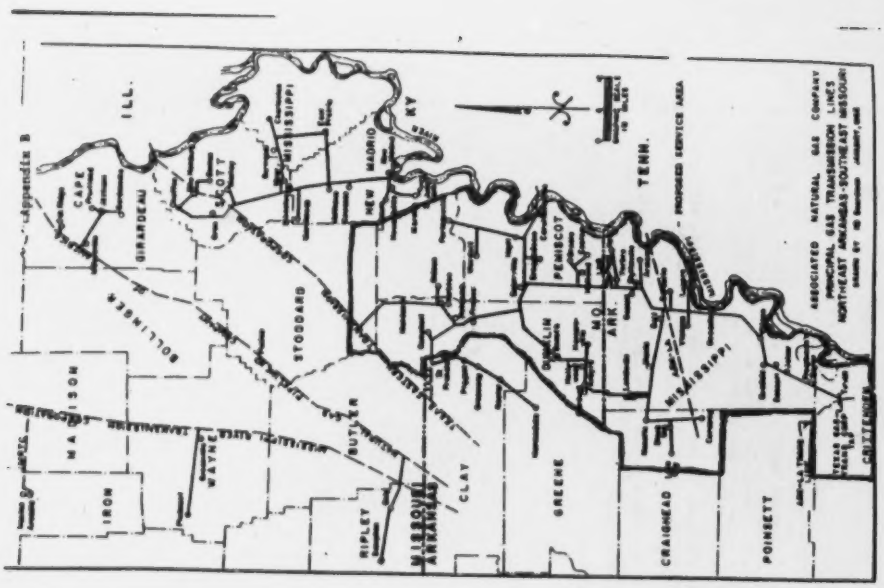
(K) With respect to the LNG facility, the ANG Division shall comply with the inspection and reporting conditions as detailed in this order.

By the Commission.

(S E A L)

Lois D. Cashell,
Acting Secretary.




ILL.
KY
TENN.
MISS.
MO.
ARK.
Appendix B
CAPE GIRARDEAU
SCOTT
NEW MADRID
PEMISCOT
DUNKLIN
STODDARD
BOLLINGER
MADISON
IRON
WAYNE
BUTLER
RIPLEY
CLAY
GREENE
CRAIGHEAD
POINSETT
CRITTENDEN
PROPOSED SERVICE AREA
ASSOCIATED NATURAL GAS COMPANY
PROPOSED GAS TRANSMISSION LINES
NORTHEAST ARKANSAS - SOUTHEAST MISSOURI